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ARTICLES

THE CULT OF HOSTILE GENDER CLIMATE: A MALE VOICE PREACHES DIVERSITY TO THE CHOIR

DAN SUBOTNIK†

There can be no doubt that law schools . . . favor men over women in almost every way imaginable.¹

[I]t can be as destructive to the goal of improving the educational environment and opportunities for women to exaggerate gender differences as to ignore them. . . . [E]xaggerating them perpetuates myths . . . allowing significant achievement by women . . . to become lost among concerns of . . . alienation.²

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1. Morrison Torrey, Jennifer Ries and Elaine Spiliopoulos, *What Every First-Year Female Law Student Should Know*, 7 Colum J Gender & L 267, 309 (1998). Torrey, a professor of law at DePaul University College of Law, teaches feminist jurisprudence and labor law.

2. Linda F. Wightman, *Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men* 26 (LSAC 1996). See also text accompanying notes 121-28. Wightman, who is not a lawyer, teaches educational research and statistics at the University of North Carolina at Greensboro.

INTRODUCTION

The American legal system wages unremitting and wide-scale war against women, feminists have charged.³ As a construct for and by males,⁴ the system, for example, undercompensates women both for their economic contribution⁵ and for the emotional harm they suffer in divorce,⁶ custody⁷ and surrogacy⁸ cases. *Roe v Wade*,⁹ in this view, is no more the glorious victory for women's autonomy than it is the triumph of home rule for men.¹⁰

The law, the argument continues, subjugates women in the workplace by offering inadequate protection against sexual harassment¹¹ and *too much* protection against fetal injury,¹² while providing overly generous preferences for veterans of the military.¹³ Most importantly, and directly supporting the war metaphor, the legal system perpetuates a system of continuous violence against women by strangers, lovers and husbands through its design or underenforcement of rape,¹⁴ domestic abuse,¹⁵ incest,¹⁶ and street harassment¹⁷ rules.

3. See generally, for example, Robin West, *Caring for Justice* (NYU 1997); Catharine MacKinnon, *Toward a Feminist Theory of the State* (Harvard 1989).

4. See, for example, Judith Baer, *Our Lives Before the Law* 16-94 (Princeton 1999). "The idea that the law is male is the core of feminist jurisprudence." Id at 71.

5. In this view, not only do family law and contract law conspire to prevent women's household and childrearing labor from being compensated during or after marriage, but they also ensure, when the marriage fails, that women are not compensated for their lack of skills that would enable them to compete in the marketplace. See West, *Caring for Justice* at 4, 84 (cited in note 3).

6. See id at 100. "[E]motionally, women suffer greater harms of *separation* and isolation than do men." Id at 148 (emphasis in original). The no-fault system, for example, fails to compensate the wife for the "separation and isolation from her larger community which the marriage has caused" or for other psychological abuse during the marriage. Id at 138.

7. The "greater harm done [to the woman in a custody case] by separating her from her child is similarly uncompensated." Id at 149. Fathers who "seek custody [of children] win in 35 percent to 70 percent of cases." Baer, *Our Lives Before the Law* at 106 (cited in note 4). "It would be difficult to find a clearer example of male bias in law." Id at 107.

8. See West, *Caring for Justice* at 55-58 (cited in note 3). Baer would give the gestation mother the right to abrogate the contract after childbirth. See Baer, *Our Lives Before the Law* at 55 (cited in note 4). Baer says nothing about possible return of compensation or medical expenses or about obligations to support the child.

9. 410 US 113 (1973).

10. "The availability of abortion removes the one remaining legitimized reason that women have had for refusing sex." Catharine MacKinnon, *Feminism Unmodified* 99 (Harvard 1987). *Roe v Wade* has "at least as much to do with assuring to men and women a degree of sexual autonomy (and therefore, to men, a degree of sexual access) as with protecting women against unwanted pregnancies." West, *Caring for Justice* at 141 (cited in note 3). In this view, of course, being pro-choice is a marker not of feminism, but of anti-feminism.

11. See Baer, *Our Lives Before the Law* at 32-33 (cited in note 4).

12. See id at 151-75, especially 156. "The fetal protection movement abuses and misuses knowledge, power and theory." Id at 156.

13. See id at 107-09.

14. See West, *Caring for Justice* at 4 (cited in note 3) ("Rape within marriage is criminal in name only, and even then generally to a lesser degree than rape outside marriage . . . The criminal statutory rapes that often precede teen pregnancies are for the most part ignored."). Normal marital relations raise issues of coercion. "If a man wants to have sex and his female partner doesn't, they more often will than they

Not surprisingly, hostilities have extended to the academy. In 1994, Lani Guinier dropped a “bombshell [o]n the world of legal scholarship”¹⁸ with a portentous announcement that the University of Pennsylvania Law School was “stratified deeply along gender lines.”¹⁹ Indeed, in *Becoming Gentlemen: Women's Experience at One Ivy League Law School*, Guinier and her colleagues (henceforth, the Penn Researchers) charged the venerable institution where Guinier then taught with offering a “hostile learning environment for a disproportionate number of its female students.”²⁰

Becoming Gentlemen was not the first feminist attack on legal education. Nor, more importantly, has it been the last. Indeed, it has inspired extensive commentary on law school gender climate, analysis of which is the subject of this Essay. A number of writers have turned the Penn Researchers' jeremiad against law school males into an academic genre;²¹ others have tried to qualify the Penn Researchers' findings in one way or another. No one, it appears, has tested the Penn Researchers' methods and interpretations for consistency, cultural logic, sincerity, and possible self-interest.

Why? I have elsewhere described the conversation-stopping effects of “I hurt” discourse,²² and will limit myself here to saying that good breeding in academics, male and female alike, discourages a “you don't hurt” or “you shouldn't hurt” response. For men, striking back at women in any way may be bad form. As for women, to the extent that they are inclined by nature or culture to bond with other women rather than to “establish hierarchy” over them, they will be even less disposed to challenge heartrending stories of women's oppression and pain.²³ But is it healthy for women to regularly hear uncontested views in which “patriarchal power is experienced by them as profoundly negating [and] fright-

won't.” Id at 110.

15. See id at 110. “Assaults and batteries in the home continue to go largely unpunished.” Moreover, if a woman fights back, God help her. “The same law of self-defense that remains impervious to battered women who kill their abusers yields to the claims of men who use deadly force against trespassing and harassment.” See Baer, *Our Lives Before the Law* at 19-20 (cited in note 4).

16. See West, *Caring for Justice* at 132 (cited in note 3).

17. See id at 146 (“it is extremely damaging to be assaulted, yelled at, jeered at or worse on the street”).

18. See Sarah Berger, et al, “Hey! There's Ladies Here!!” 73 NYU L Rev 1022, 1041 (1998).

19. See Lani Guinier, Michele Fine and Jane Balin (with Ann Bartow and Deborah Lee Stachel), *Becoming Gentlemen: Women's Experience at One Ivy League Law School*, 143 U Pa L Rev 1, 2 (1994). The study was based on examination of self-reported survey data, written narratives and group interview data.

20. Id at 59.

21. While the title of the Penn Researchers' article suggests that its scope is limited (i.e., to “One Ivy League Law School”), that article was expanded and published as a book without the qualification. See Lani Guinier, Michelle Fine and Jane Balin, *Becoming Gentlemen: Women, Law School, and Institutional Change* (Beacon 1997).

22. See Dan Subotnik, *What's Wrong with Critical Race Theory? Reopening the Case for Middle Class Values*, 7 Cornell J L & Pub Pol 681 (1998).

23. See text accompanying notes 44 and 72. See also Deborah Tannen, *You Just Don't Understand: Men and Women in Conversation* (Morrow 1990).

eningly and pervasively *violent*”?²⁴ Do male law professors ever perform acts of kindness for their female students, and, if so, do these occur in spite of contempt for women or on account of normal fondness for them? Would it upset a central feminist plan if a man stood up, for once, like a man?²⁵

It is a virtual article of faith in this country that a vigorous defense must be allowed an accused, no matter how heinous the crime charged. The premise of this Article is that male academics are no less worthy than mass murderers and, thus, however distasteful the defense, the world is a better place for giving it voice.

To help evaluate the *Becoming Gentlemen* phenomenon I start by examining the gender climate literature. I then survey the gender climate at my own law school. No study, however well conceived, can neatly evaluate something as intangible and protean as the gender climate at even one school, let alone at the two hundred law schools around this country. The objective here must therefore be limited; it is to examine the biases, contradictions, and other limitations of previous studies. The empirical portion of this Study should offer both a check on the analysis and a view of a non-elite school that, as such, is more representative of American law schools than is the University of Pennsylvania.

I conclude that the evidence fails to support the general charge of a hostile learning environment in American law schools and the call for a new regime in legal education. If I am right, perhaps the smugness, *tua culpas*, breast beating, and self-abasement can stop.

I. BACKGROUND

From beginning to end, *Becoming Gentlemen* explains, law school is a harrowing and joyless experience for women students at Penn. In the first year, these students were already far more critical of their educational experiences than their male counterparts.²⁶ They complained that their “voices were ‘stolen’ from them” by instructors who had allowed classroom discourse to be dominated by males who, in turn, failed to use gender-neutral language or control other sexist impulses.²⁷ The resulting alienation of these women, the Penn Researchers argued, was related to the distinctly lower grades they earned relative to men, a phenomenon inconsistent with their comparable entering credentials.²⁸

The disproportionate emotional burden borne by women was not limited to

24. See West, *Caring for Justice* at 261 (cited in note 3).

25. Sometimes it seems so. Though this Article would seem to belong in a journal devoted to gender, women’s law journals at Berkeley, Columbia, Georgetown, Texas and Yale all rejected this Article.

26. See Guinier, et al, 143 U Pa L Rev at 3 (cited in note 19). First year “was like a frightening out-of-body experience,” reported one woman. “Lots of women agree with me. I have no words to say what I feel. My voice from that year is gone.” Id at 4. “[F]or me the damage is done,” reported another, “*it’s in me*. I will never be the same. I feel so defeated.” Id (emphasis in original).

27. Id at 4, 38.

28. Id at 16, 21, 23.

the first year of law school. Upper-division female students complained about “gender tensions, hostilities and male faculty and/or students ‘not taking women very seriously.’”²⁹ Male professors, for example, favored male students not only by encouraging them to speak more often,³⁰ but also by giving them more positive feedback.³¹ As evidence of women’s distress, the study pointed out, far more women than men were seeking “professional help”³² at the Law School and reporting such behavior as crying.³³

By the end of the third year, the Penn Researchers report, much of the women’s former selves had been obliterated. Women came to law school with public interest dreams only to leave on a corporate law track.³⁴ Initially unhappy with their level of class participation, they ended up participating no more frequently, but with greater acceptance of their silence.³⁵ Incidents that were earlier condemned as offensive displays of sexism came to be seen as jokes.³⁶ Law school taught them to be “less emotional” and “more objective.”³⁷ After three years, many women students reportedly learned to stop caring about others.³⁸ So destructive of women’s personal identities was the law school experience, said the Penn Researchers, that, by the end of their studies, women were expressing fewer complaints than men about their law school experience.³⁹

Part of the problem, the Penn Researchers report, was that male and female students wanted different things from their teachers. After agreement that “knowledge of subject matter” and “enthusiasm for teaching” were the most important teaching qualities, 93 percent of women selected “treats students with respect” as the third most important quality, while 82 percent of men selected “expresses ideas clearly.”⁴⁰ Similarly, women valued “openness to questions outside class” and “friendly with students” more than men did.⁴¹

The source of women’s distress in law school, according to the Penn Researchers, lies in differences in women’s culture. Citing Carol Gilligan, Catharine MacKinnon and Mari Matsuda for definitions of that culture⁴²—but deliberately

29. Id at 59.

30. Id at 63-64.

31. Id.

32. Id at 44.

33. Id. The authors admit that the crying may be as attributable to the socialization process for women generally as to the law school experience in particular. Id at 38 n 101.

34. Id at 3.

35. Id at 36.

36. Id at 38 & n 127.

37. Id at 49.

38. Id at 50.

39. Id at 3.

40. Id at 34-35.

41. Id at 35.

42. Id at nn 44-48, citing Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development* (Harvard 1982); MacKinnon, *Feminism Unmodified* (cited in note 10); Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 Women’s Rights L Rep 7 (1989).

refraining from taking a position on whether that culture is biological or social in origin⁴³—the Penn Researchers report that women’s culture is marked by a preference for social styles based on relational logic and empathy.⁴⁴ The Socratic method, by contrast, calls for student “performance” and is distasteful and intimidating to women because it emphasizes hierarchy and conflict.⁴⁵ In sum, the problem with law school is the male model that is at its heart. Hence the title of the subject work, *Becoming Gentlemen*,⁴⁶ and its identity-wrenching opening epigraph: “Am I to be cursed forever with becoming someone else on the way to myself?”⁴⁷

If women’s sense of self is so fragile, the function of law schools cannot be to retool women to operate in a world historically shaped by men. Nor can women be asked to make adjustments in values and behavior on their own.⁴⁸ What should be done? The obvious starting point is for law schools simply to admit and hire more women students and professors.⁴⁹ Beyond that, the Penn Researchers report, law schools need the following three things. First, law schools need a genuine diversity of teaching styles, including perhaps “randomly assigning First-year students to ‘working groups.’”⁵⁰ This will, reportedly, mitigate the damage wrought by the adversarial Socratic method⁵¹ by emphasizing non-litigation skills needed by lawyers and defusing “competitive, even harassing behavior among male students that disproportionately alienates and ridicules

43. See Guinier, et al, 143 U Pa L Rev at 81 (cited in note 19). Robin West surmises that it is child-birth and nursing that lead women to assign great importance to their relationships. See West, *Caring for Justice* at 18, 117 (cited in note 3). Yet she too does not rule out a sociological explanation. Id at 280.

44. See Guinier, et al, 143 U Pa L Rev at 80 (cited in note 19). For whatever reason, men are simply “incapable of empathic knowledge regarding the subjective well-being of others.” Robin West, *Economic Man and Literary Woman: One Contrast*, 39 Mercer L Rev 867, 869 (1988). Reference to MacKinnon’s work is puzzling, because she, as Guinier herself recognizes, strongly opposes Gilligan and Guinier on the issue of gender difference. For a brief summary of the debate, see text accompanying notes 75-80.

45. Guinier, et al, 143 U Pa L Rev at 46.

46. The title is based on a professor’s greeting to his Yale Law School class in the early 1970s, “Good Morning, Gentlemen.” See Guinier, et al, *Becoming Gentlemen* at 85 (cited in note 21).

47. Guinier, et al, 143 U Pa L Rev at 2 (cited in note 19) (quoting Audre Lorde).

48. “Although some have said in response to our data that perhaps women are not suited to law school or should simply learn to adapt better to its rigors, we are inclined to believe that it is the law school—not the women—that should change.” Id at 6.

49. Id at 98-100.

50. Id at 93-94.

51. Id. In a “woman-centered university,” says Adrienne Rich, more courses would be conducted in a style of community, fewer in the “masculine adversary style of discourse.” Mary F. Belenky, et al, *Women’s Ways of Knowing* 221 (Basic 1997) (produced by the Fund For Improvement of Post-Secondary Education for Women’s Development Project (FIPSE)) (quoting Rich). The adversarial Socratic method has other pitfalls as well. “On the whole,” write Belenky, et al., “women found the experience of being doubted debilitating rather than energizing.” Id at 227. They found it “hard to see doubting as a ‘game’; they tend[ed] to take it personally.” Id at 105. The Penn Researchers do not explicitly cite *Women’s Ways of Knowing*. This book, however, which is based on the work of Gilligan and is cited by other writers on gender climate, elaborates on many of the themes touched upon here. Because it so enriches the discussion, frequent reference will be made to it.

some women.”⁵² Second, law schools would benefit from smaller classes.⁵³ Finally, law schools should train students for classroom exchanges.⁵⁴ These specific recommendations will presumably draw few strong objections. Not so the Penn Researchers’ more general call for a “dismantling [of] the hierarchy itself [by] reinvention of law school, and a fundamental change in its teaching practices, institutional policies, and social organization.”⁵⁵

The Penn Researchers’ report raises a host of questions. Among them: What do men think about their law school experience? Are law schools largely responsible for the reported high level of malaise among female students if a sense of insecurity is pervasive among young women in American society, as Gilligan and others report?⁵⁶ Are they largely responsible for lower class participation of women students when scholars have found gender disparities in class participation in many other classroom settings?⁵⁷ A comment by a first-year female Harvard law student describing the classroom environment is instructive. “When I get called on,” she says, “I really think about rape. It’s sudden. You’re exposed. You can’t move. You can’t say no. And there’s this man in control who is telling you exactly what to do.”⁵⁸ If instructors are aware of such reactions, does not deliberately calling on women implicate them in the violation of women?⁵⁹

52. See Guinier, et al, 143 U Pa L Rev at 95 (cited in note 19).

53. Id at 96.

54. Id at 97.

55. Id at 98, 100. The Penn Researchers do not elaborate.

56. See Gilligan, *In a Different Voice* (cited in note 42); Christina H. Sommers, *The War Against Boys*, Atlantic Monthly 59-64 (May 2000) (discussing Gilligan’s work). The Penn Researchers themselves recognize the issue of causation. See Guinier, et al, 143 U Pa L Rev at n 101 (cited in note 19). See also Susan Carpenter, *Women College Students Hit Harder by Stress*, Providence J F1 (March 14, 2000) (commenting on an American Council on Education and UCLA Higher Education Research report finding that 39 percent of first-year college women, but only 20 percent of first-year men, felt frequently overwhelmed at college. About the stress gap, Carpenter reports, “Experts—and students themselves—can’t agree whether it is real or perceived.”). The stress issue is obviously more complicated than it seems. It should be emphasized that Sommers firmly rejects the notion that young women in this society are at a psychological disadvantage. *The War Against Boys*, Atlantic Monthly at 50-74. “The description of America’s teen-age girls as silenced, tortured, voiceless, and otherwise personally diminished is indeed dismaying,” she writes. “But there is surprisingly little evidence to support it.” Richard Bernstein, *Boys, Not Girls, as Society’s Victims*, NY Times E6 (July 31, 2000) (quoting Sommers). Sommers says nothing specifically about law students.

57. See Belenky, et al, *Women’s Ways of Knowing* at 45 (cited in note 51). See also Myra Sadker and David Sadker, *Failing at Fairness: How America’s Schools Cheat Girls* 48 (Scribner 1994). See also Stephanie Wildman, *Classroom Climate*, in Stephen Giller, ed, *Looking at Law School: A Guide from the Society of American Law Teachers* 77 (1997) (“Many of us, especially women, are taught to be quieter than others by the cultural messages we learn before we get into law school; we learn silence as a survival mechanism”); Linda Hirshman, *A Woman’s Guide to Law School* 6 (Penguin 1999) (“To my surprise many of the women I interviewed did not want to talk in class.”). The reluctance of women to speak extends to public and professional settings. See Virginia Varian, *Why So Slow? The Advancement of Women* 5 (MIT 1998).

58. Scott Turow, *One L* 220 (Putnam 1977).

59. Professor Maxine Arkin expresses the problem that female students generally present for sensitive instructors: “If you call on them, you’re imposing hierarchy; if you don’t call on them, you’re overlooking them.” See Hirshman, *A Woman’s Guide to Law School* at 6 (quoting Arkin) (cited in note 57).

These are not the only questions that come to mind. The Penn Researchers report only that men dominate class discussions; they never claim that female *volunteers* are disproportionately ignored. Suppose, as could well be the case, that male law students volunteer more frequently than do female students.⁶⁰ Do we not have a knotty problem? If the professor recognizes men and women proportionately, will men not end up dominating the discussion? On the other hand, if the professor favors women volunteers to achieve gender balance, is that fair to the men as individuals? The question might be reducible, therefore, to whether there should be a policy of calling on volunteers by taking gender into account.⁶¹ This issue would seem to be worthy of at least some discussion in an article on classroom participation.

One also wonders whether, if graduating women law students ended up more satisfied than men with their level of class participation, the logical conclusion is that they were defeminized?⁶² Perhaps the women understood that they had no obligation to speak up unless called on, a right perhaps having as its origin the not unappealing notion that women do not like to express opinions before they think things through.⁶³ A policy that favors calling on women under these circumstances could easily be construed as destructive to women's culture.⁶⁴

As for the reported public service aspirations of entering women law students,⁶⁵ maybe their shift into corporate practice results from an increased sense of financial responsibility—not wanting to saddle themselves, their actual or

60. If men speak more frequently, presumably they are volunteering more frequently as well.

61. We can imagine the professor's announcement on the first day of class: "The current situation is that everyone's opinion is not equally valuable here. In the future, we need to hear as equally as possible from men and women in this class. Thus, to remedy the current situation, when women raise their hands, I will tend to call on them first. I trust you will understand." Such a policy would then have to be considered for its impact on other groups that feel silenced. A colleague suggests that perhaps the professor should alternate calling on men and women. This policy would not only necessitate the same kind of foundation laying, but it would also imply that no discussion could be complete if a woman did not participate.

62. See text accompanying notes 34-39.

63. See Belenky, et al, *Women's Ways of Knowing* (cited in note 51): "An opinion is more than an exercise of the intellect. It is a commitment; it is something to live by." Id at 94. "I don't take on an opinion as my own unless I have really thought about it and believe in it." Id at 149. The last statement is from an interviewee.

64. To the extent they promote conflicting goals, i.e., equality and authentic culture, feminists create a major dilemma for law schools in other areas as well. Assume that female law students do enter law school motivated by public service. See text accompanying note 34. Now suppose that they hold on to these values throughout their law school years. Would not law schools be subject to the claim that they were steering women into *pink ghettos*, with pink salaries? "Gender role stereotypes create and maintain occupational segregation by sex, inhibit women's upward mobility [and] limit women's earning power." Nancy Levit, *Feminism for Men: Legal Ideology and the Construction of Maleness*, 43 UCLA L Rev 1037, 1098-99 (1996).

65. See text accompanying note 34. The evidence, it turns out, is mixed as to whether women law students are more motivated to "help society." See American Bar Association Commission on Women in the Profession, *Options and Obstacles: A Survey of the Studies of the Careers of Women Lawyers* 6-9 (1994) (prepared by Marilyn Tucker and Georgia A. Niedzielko).

potential spouses, or their parents with \$100,000 in school debt—and the realization that they cannot live in New York City on a \$40,000 public service salary. Or maybe they were responding to pleas by Susan Estrich that they not be distracted by lesser challenges, but rather devote themselves to pursuit of the brass ring of law firm partnerships for the greater glory of womanhood.⁶⁶ Similarly, perhaps women have concluded over three years that the gender atmosphere at law school was not so bad and that their initial reaction to comments and jokes was pre-feminist rather than feminist.⁶⁷

Education, in sum, leads to changes in thinking. But change involves loss as well as gain and focusing only on loss surely precludes any gain. In this light, let us evaluate the argument that the law graduate who changes has sacrificed her identity. Consider Myra Bradwell who, more than a century ago, sought the right to practice law in the State of Illinois. In rejecting her petition, the Illinois Supreme Court wondered whether a woman could “engage in the hot strifes of the bar, in the presence of the public, and with momentous verdicts the prizes of the struggle.”⁶⁸ If women are essentially conflict-averse and relational, as the Penn Researchers believe, a victory for Bradwell in that sensational case might have led to a giant step backwards for womankind.

However, perhaps in a liberal state, the most important thing is to give people choices and let them worry about the consequences. How should we think about a law school that not only accepts women students but also, respecting *la différence*, shifts to a more relational, less hierarchical, *female* mode of pedagogy? The world might in the long run, to be sure, be a better place as a result. But given the current legal system and an assumption of essentialist gender difference along the lines suggested by Gilligan, a law school would surely be throwing women to the lions—and thus creating a real hostile gender climate for women—if it did not teach them to go for the kill, and even to enjoy the process.⁶⁹ How else would a woman student learn to deal with a witness who was not in a cooperative, relational mood? In other words, might it not be helpful to

66. See Susan Estrich, *Sex and Power* 245 (Riverhead 2000) (“motherhood doesn’t need a movement anywhere near as desperately as ambition does. Hallmark celebrates women who are mothers; who celebrates women who want power?”).

67. See Katie Roiphe, *The Morning After: Sex, Fear and Feminism on Campus* 6 (Little, Brown 1993) (“The image that emerges from feminist preoccupations with rape and sexual harassment is that of women as victims, offended by a professor’s dirty joke . . . This image of a delicate woman bears a striking resemblance to that fifties ideal my mother and the other women of her generation fought so hard to get away from . . . But here she is again, with her pure intentions and her wide eyes. Only this time it is the feminists themselves who are breathing new life into her.”). For a discussion of the ethics and esthetics of gender (and race) jokes, see Dan Subotnik, *The Joke in Critical Race Theory: De Gustibus Disputandum Est?*, 15 *Touro L. Rev.* 105 (1998).

68. *In re Bradwell*, 55 Ill 535, 542 (1869).

69. Belenky, et al., write sympathetically about a student who was distressed when a teacher offered an interpretation of a text and asked students to “start ripping at it.” See Belenky, et al., *Women’s Ways of Knowing* at 105 (cited in note 51). But whether or not a lawyer is so disposed, tearing apart texts is part of the job.

delay study of gender climate in law schools until, say, five years after graduation, at which time students could better evaluate the law school experience?⁷⁰ Is the major gender climate problem in American law schools today that men must win, or that, because women pursue mutually exclusive goals, men can't win?

At another level, is not the Penn Researchers' call for reinvention of law school premised on a highly contested theory of gender difference?⁷¹ In researching the development of women's moral consciousness, Gilligan found what is now often celebrated as an "ethic of care."⁷² But is she right? New research suggests that women's aggression is more subtly displayed, so that while boys are publicly, and in some cases physically, "vanquishing rivals," girls are "learning to emotionally devastate victims who don't even know what hit them."⁷³ This indirect aggression is accomplished through such stratagems as shunning, stigmatizing, telling tales, and befriending the victim's enemy.⁷⁴

Catharine MacKinnon, whose work the Penn Researchers cite favorably,⁷⁵ is dubious about whether *relational feminists* are really listening to women.⁷⁶ If you will "[t]ake your foot off our necks," she says—speaking to men, and surely also, albeit indirectly, to Gilligan—"then we will hear in what tongue women speak."⁷⁷ As for the very notion of sex differences, she is emphatic. "Differ-

70. Consider the way that law schools deal with student evaluations. An instructor getting weak evaluations is not summarily dismissed on the grounds that the customer is always right. Most of us understand in our industry that this class of customers may not know best. By contrast, an interview five years down the line could well produce the following response: "I am five feet tall and weigh not quite one hundred pounds. All my life I have been brushed aside, pushed around, and ignored—and not only by men. To be sure, law school required painful adjustment. But it was worth it. It's not that I don't experience the world physically and feel vulnerable anymore. It's that when I am negotiating or in court, I know I can knock anyone's block off." Legal skills for women may be an equalizer.

71. There is a vast feminist literature on gender difference. Those who are familiar with it are asked to bear with the author a bit as he summarizes the literature for others.

72. So did Virginia Held. See Held, *Feminist Morality: Transforming Culture, Society and Politics* (Chicago 1993). For clear summaries of the "ethic of care" issue by a relational feminist, see West, *Caring for Justice* at 1-21 (cited in note 3); Robin West, *Economic Man and Literary Woman: One Contrast*, 39 Mercer L Rev 867, 869 (1988) (men "are incapable of empathic knowledge regarding the subjective well-being of others"); Robin West, *Jurisprudence and Gender*, 55 U Chi L Rev 1, 3 (1988) ("the central insight of feminist theory of the last decade is that women are 'essentially connected,' not 'essentially separate,' from the rest of human life, both materially . . . and existentially . . . through moral and practical life").

73. John Tierney, *Negotiating Sexual Politics on 'Survivor'*, NY Times B1 (Aug 22, 2000).

74. Id. See also Deborah Blum, *Sex on the Brain: The Biological Differences Between Men and Women* 263 (Viking 1997) (quoting Laurie Rudman, a University of Minnesota psychology professor: "Women are far more likely to 'nuke' a strong woman" than men are).

75. See text accompanying note 42.

76. For those interested in seeing contemporary feminism placed into a psychoanalytic context, I highly recommend Mari Jo Buhle, *Feminism and its Discontents, A Century of Struggle with Psychoanalysis* (Harvard 1998).

77. See MacKinnon, *Feminism Unmodified* at 45 (cited in note 10). As if things were not sufficiently confusing, radical feminists apparently hold that relational feminist claims of women's potential for material "connection" invite "intrusion into the existential integrity of our lives [so that women] long for the individuation and independence that deliverance from that state would permit." Robin West, *Jurisprudence and Gender*, in Katharine T. Bartlett and Rosanne Kennedy, eds, *Feminist Legal Theory: Readings in Law and Gender* 208 (Westview 1991).

ences,” she writes, “are inequality’s post hoc excuse, its conclusory artifact, its outcome presented as its origin, the damage that is pointed to as the justification for doing the damage after the damage has been done.”⁷⁸ “The difference route,” in this view, can be interpreted as presenting a protection racket as equal protection of the laws.⁷⁹

One might think that MacKinnon’s difference on the subject of gender difference would lead her to support at least some practices challenged by the Penn Researchers. After all, if it is domination rather than stylistic difference that is at the heart of the lived effect of gender, mastering the master’s tools, among them the Socratic method, would seem especially useful. But MacKinnon is, in the last analysis, no more supportive of legal education than Guinier. Appalled at the number of women lawyers who defend pornographers, she places the blame squarely on law schools:

What law school does [for women law students] is this: it tells you that to become a lawyer means to forget your feelings, forget your community, most of all, if you are a woman, forget your experience. Become a maze-bright rat. Women lawyers as a group . . . go dead in the eyes like ghetto children, unlike the men, who come out of law school glowing in the dark.⁸⁰

78. See MacKinnon, *Feminism Unmodified* at 8 (cited in note 10). John Stuart Mill, perhaps the greatest male feminist, would surely agree. “All the moralities tell [women] that it is their nature to live for others, to have complete abnegation of themselves, and to have no life but in their affections.” “[I]t would be a miracle,” he concludes, “if the object of being attractive to men had not become the polar star of feminine education and formation of character.” Katharine Bartlett and Angela Harris, *Gender and the Law* 490 (Aspen 1998), quoting John Stuart Mill, *The Subjection of Women*. Contemporary commentators have spelled out the same implications for *difference feminism*. See Herma Hill Kay, *Perspectives on Sociobiology, Feminism and the Law*, in Deborah L. Rhode, *Theoretical Perspectives on Sexual Difference* 84-85 (Yale 1990) (“The contemporary feminist fascination with difference coexists with the emergence of a conservative social movement committed to a return to traditional values and a celebration of women’s primary role as mothers. One immediate result . . . might be the use of feminist theory to justify nonfeminist goals.”). See also Rhode, *Theoretical Perspectives on Sexual Difference* at 5-6 (“Males’ association with abstract rationality and females’ with interpersonal nurturance reflects long-standing dichotomies that have restricted opportunities for both sexes”).

79. Judith Baer makes the most highly developed and clearest case against the notion of women’s “ethic of care.” Baer takes readers far outside the scope of this Article, but her conclusions can be simply stated:

Influential works proclaim a “different voice,” an “ethic of caring,” “women’s ways of knowing,” and other traits which these authors cannot distinguish from traditional “femininity” no matter how hard they try . . . By valorizing care, nurturance and responsibility, the difference approach reinforces the extra burdens women bear in our society . . . Difference feminism is feminism in name only . . . it is in fact a step backward. [It] does not monopolize, or even dominate, feminist scholarship . . . We cannot free the notion of difference from the notion of inferiority.

Baer, *Our Lives Before the Law* at 6-8, 200 (cited in note 4).

Baer’s opinion notwithstanding, Gilliganism would seem far from dead. Harvard University just received \$12.5 million from Jane Fonda to establish a center for gender studies in Gilligan’s honor; Carol Gilligan herself has just accepted an appointment at New York University’s Law School and Psychology Department. See Ed Hayward, *Harvard’s Fonda Jane’s \$12.5 Million*, Boston Herald 1 (Mar 3, 2001); Patrick Healey,

The Penn Researchers explicitly finesse the issue of whether gender differences stem from nature or nurture. It is easy to imagine the difficulty that the issue presented. If reactions to the law school are gendered and differences are natural and essential, then, following the Penn Researchers' arguments, maybe women have as much place in law practice as in Major League Baseball, presently constituted. If, on the other hand, differences in learning styles are socially constructed, then the category of women as a subset of intellectual beings is *ultimately* of no interest and will wither away.⁸¹ In such a world, that is to say, it would hardly matter if we used what has been considered the male or female models of legal education. In these paradoxical circumstances, is not Rhode right when she says that women must "remain skeptical about Theory" and "cannot cede the struggle for knowledge to those less respectful of its limitations," but must be "more self-critical about the partiality of our understanding and more explicit about the values underlying it"?⁸² However one answers the question, does not the often acrimonious debate by feminists about difference tend to refute the relational feminist argument?

Finally, there are technical questions. Did the Penn Researchers rely too much on leading questions?⁸³ Most important and unsettling: What was the *frequency* of the gender climate complaints that the Penn Researchers describe? Offering not even a brief discussion of these matters, the report, it would seem, provides a deeply flawed account of student views.⁸⁴

Some of these questions may well explain why the University of Pennsylvania Law School treated the Penn Researchers' "bombshell" as a dud. As former Dean Colin Diver relates, he appointed a committee to evaluate the findings but no recommendations emerged.⁸⁵ Moreover, except for reducing the size of sections in first-year courses, no programmatic changes were made.⁸⁶ Speak-

Harvard Educator Seeks Renewal at NYU, Boston Globe A1 (Mar 8, 2001).

80. Catharine MacKinnon, *Feminism Unmodified* at 205 (cited in note 10).

81. To help the unisex process along and ensure true equality, the suggestion has been made that babies not be registered at birth by sex. See Valerie Bryson, *Feminist Debates* 87 (NYU 1999). See also Varian, *Why So Slow? The Advancement of Women* at 23 (cited in note 57) (explaining why her first question to the parent of an infant is, "How old is your baby?" "Why," she asks, "do adults need to know a baby's sex? What does it tell you about the child?").

82. See Rhode, *Theoretical Perspectives on Sexual Difference* at 84-85 (cited in note 78).

83. Consider their survey's open-ended question: "Please use this space to describe any acts or comments made by a professor or fellow student you have witnessed or experienced at the law school that made you uncomfortable for gender-based reasons." See Guinier, et al, 143 U Pa L Rev at 109-10 (cited in note 19). A more appropriate question would have been: "Has any professor or colleague ever made a statement . . . ?" As phrased by the Penn Researchers, the clear premise of the survey question is that there were such acts or comments.

84. One wonders how the article got published without the data on male responses. Is this an example of law review editors making selection decisions based on the status of the author rather than on the integrity of her or his work? See Dan Subotnik and Glen Lazar, *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J Legal Educ 601 (1999).

85. E-mail from Dean Colin Diver, to Author (March 15, 2000) (on file with author).

86. *Id.* No study that I am aware of shows that class size bears any relationship to women's per-

ing informally, the Dean characterized the faculty as largely “unpersuaded” by the report and the female students who came to speak to him as “insulted” by it because it implied a sex-based disadvantage in the study of law.⁸⁷ Dean Diver reports that two scholars expressed interest in examining the Penn Researchers’ data but that he was told the data were lost. The Penn Researchers’ findings of grade differentials and “hostile learning environment” have never been validated at Penn either for the years in question or for subsequent years.⁸⁸

Becoming Gentlemen, then, leaves us with many unanswered questions, of which at least three are fundamental: (1) Was the gender climate at Penn Law School indeed as oppressive to women as the Penn Researchers report?⁸⁹ A “hostile learning environment,” after all, suggests a “hostile environment,” which in an employment setting is actionable.⁹⁰ (2) Did the gender climate adversely affect women professors? And (3) have conditions for women law students remained oppressive since *Becoming Gentlemen* was published?⁹¹ If the answers to these questions are no, should the legal academy at least hesitate before yielding to demands for fundamental changes in a reinvented law school?⁹²

In an effort to develop answers to many, if not all, of the questions we have raised, this Essay will examine the gender climate at Touro Law School, a non-

formance.

87. *Id.*

88. Richard Sander of UCLA is working on a new law school gender study in which the University of Pennsylvania Law School is included.

89. Mari Matsuda, writing before *Becoming Gentlemen* was published, helps to crystallize the issue. Matsuda, whom Guinier cites positively (see text accompanying note 42), asks her reader to imagine a first-year woman student of color who is asked by a white male professor about the legality of a rape suspect’s arrest. The student, she tells us, wants to talk about the race of the defendant or victim, about police brutality, and about the experience and fear of rape, but suppresses the impulse. If the class is taught by a woman, in contrast, the student will at least feel invited to talk about her consciousness as a woman. If that teacher is not a minority, the student will continue to suppress “her nationalist anger at white privilege and her perception that the dominant white conception of violence excludes the daily violence of ghetto poverty.” See Matsuda, 11 Women’s Rights L Rep at 8 (cited in note 42). Since a suppressed impulse is oppressive, so too will be criminal law and perhaps any law school class that is taught by a white male teacher.

90. See *Meritor Savings Bank, FSB v Vinson*, 477 US 57 (1986); *Davis v Monroe County*, 526 US 629 (1999).

91. A fourth question might be added: How should the complaints of women students be understood? Robin West suggests that in a patriarchal society, because they internalize the values of the dominant culture, women will be unable to fairly judge their own condition. To overcome the problem of “false consciousness,” to uncover their *true* sentiments, West urges women to speak freely and not to worry about subjecting their messages to normal academic screening processes. Hence, women “must give voice to the hurting self, even when that hurting sounds like a child rather than an adult; even when that hurting self voices trivial complaints.” Robin West, *The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Philosophy*, 3 Wis Women’s L J 81, 86 (1987). Have the women students whose voices we have heard taken West’s plea to heart? If so, their words would ultimately require interpretation by professional feminists, presumably like West. But does this make sense? There would appear to be more than enough anti-male sentiment expressed by students in *Becoming Gentlemen* to rebut at least a presumption that the male professorate has taken control of women students’ minds. Accordingly, the notion that women cannot evaluate their own experience is rejected as a presumption.

92. See text accompanying note 55.

elite school that may, as a result, be more representative of law schools generally. For the observations herein to make sense, it is crucial to place the Penn Researchers' report in some kind of context. What led up to the gender-based attack on legal education and, even more important, how has the battle proceeded? Put otherwise, how should law academics understand the statement recently made in a major study of women and the law that "[a]t many, if not most law schools, blatant discrimination against women is still the order of the day"?⁹³ These questions are examined through two prisms: the condition of (1) women students and (2) women faculty.

II. THE LAW SCHOOL CLIMATE FOR WOMEN STUDENTS

A useful starting point in evaluating the gender climate phenomenon is a 1988 article by two then recent Yale Law graduates⁹⁴ who explored what they called the "four faces of alienation" in law school: "from ourselves, from the law school community, from the classroom, and from the content of legal education."⁹⁵ Emerging from a women's discussion group were findings that students were "silenced in the classroom"⁹⁶ by the drowning of women's speech in a flood of grandstanding male voices;⁹⁷ excluded from male study groups and discussions;⁹⁸ and discouraged by (1) the acontextuality of discourse "in which feelings and personal beliefs are rigorously excluded,"⁹⁹ (2) the almost exclusive use of male pronouns,¹⁰⁰ and (3) the fact that women were not "important enough" for most after-class discussions with the professor.¹⁰¹ That law school did not have to be so emotionally draining was evident to them from the fact that they were nurtured in their own discussion group by a sense of "co-feeling," defined by Carol Gilligan and Grant Wiggins as "the ability to *participate* in another's feelings, signifying an attitude of engagement rather than an attitude of judgment or observation."¹⁰² Findings such as these clearly set the stage for

93. Lorraine Dusky, *Still Unequal: The Shameful Truth about Women and Justice in America 2* (Crown 1996). Dusky, who is not an attorney, writes that of some seventy women students she interviewed, only three reported that they had "experienced no sex discrimination." *Id.* at 22. According to Dusky, Langdell's scientific method is designed to produce "moral eunuchs." *Id.* at 13.

94. Catherine Weiss and Louise Melling, *The Legal Education of Twenty Women*, 40 *Stan L Rev* 1299 (1988). I do not suggest that the gender climate field originated with Weiss and Melling. There were other early contributions, including Taunya Banks, *Gender Bias in the Classroom*, 38 *J Legal Educ* 137 (1988).

95. Weiss and Melling, 40 *Stan L Rev* at 1299 (cited in note 94).

96. *Id.* at 1300. "There were times when women made points, and they were ignored or trivialized. Five minutes later, a man would make the same point, in three parts, and it was discussed." *Id.* at 1336.

97. *Id.* at 1302, 1335.

98. *Id.* at 1326.

99. *Id.* at 1307.

100. *Id.* at 1337.

101. *Id.* "When the professor is a man, the cluster around [him] consists only of men."

102. *Id.* at 1303. According to Belenky, "[u]nderstanding involves intimacy and equality between self and object. [It] entails acceptance. It precludes evaluation because evaluation puts the object at a distance, places the self above it and quantifies a response to the object that should remain qualitative." Belenky calls

Becoming Gentlemen.

A few years later, when the aftershocks of *Becoming Gentlemen* were being felt, a similar study led by Marsha Garrison was published.¹⁰³ Conducted at Brooklyn Law School, the study produced results that were frequently inconsistent with those of the Penn Researchers. Women performed equally in terms of grades and honors.¹⁰⁴ They did report less engagement in classroom discussion¹⁰⁵ and more frequent crying and some sleep difficulties, but no greater use of psychological services.¹⁰⁶ Garrison and her co-authors described a learning environment in which, for the most part, gender did not play a prominent role. Some female students did complain that male professors favored men.¹⁰⁷ Male students, however, registered even more strongly their perception that women professors favored women students.¹⁰⁸ Nevertheless, the Brooklyn team concluded that their data "support the utility of the educational reforms urged by the Penn Researchers as a means of raising women's participation rates and self-esteem."¹⁰⁹

At the same time that the Penn report was being disseminated, the American Bar Association was engaging in a major study of its own. Authored by Cory Amron, Georgia Niedzielko and Professor Mary Becker and released in 1996,¹¹⁰ *Elusive Equality*, which was based on hearings and group meetings with students and faculty at law schools and at other sites throughout the country,¹¹¹ endorsed the Penn Researchers' work. Among its findings: "many women still experience debilitating instances of gender bias";¹¹² young white men seem "more threatened by women classmates today than [sic] in the past," a phenomenon that may

this "epistemological orientation *connected knowing*" and claims it "comes more easily to women." See Belenky, et al, *Women's Ways of Knowing* at 101, 229 (cited in note 51) (emphasis in original). Belenky refers to the other kind of knowledge as *separate knowing*. Id at 104. Belenky illustrates this male point of view by telling of one professor who asked the class to "start ripping at his interpretation" and another whose idea of a paper writing formula is: "You take one point of view, and then you address the points of view that might most successfully challenge your point of view. You try to discourage those." Id at 105, 107.

103. Marsha Garrison, Brian Tomko and Ivan Yip, *Succeeding in Law School: A Comparison of Women's Experiences at Brooklyn Law School and the University of Pennsylvania*, 3 Mich J Gender & L 515 (1996). Garrison is a Professor of Law at Brooklyn Law School.

104. Id at 520. The same seems to be true at Columbia Law School. See Chiu-Huey Hsia, *Men, Women Perform Equally Well, Study Says*, Columbia Spectator 1 (Mar 20, 1995).

105. See Garrison, et al, 3 Mich J Gender & L at 525 (cited in note 103).

106. See id at 530.

107. See id at 529.

108. See id.

109. Id at 537.

110. *Executive Summary* to American Bar Association Commission on Women in the Profession, *Elusive Equality: The Experiences of Women in Legal Education* (1996).

111. See *Elusive Equality* at 2 (cited in note 110).

112. Id. "Too often," the report explains, women's experiences in law school have the effect of "undermining their confidence and impairing their ability to fulfill their potential for success in the profession." Id at 4. The report cites, among other things, the underperformance of women relative to men at law school and a faculty member who "routinely refers to women students as 'little girl' and 'sweetie.'" Id at 8, 3.

lead men to behave inappropriately in the company of their female classmates;¹¹³ men speak more than women in class;¹¹⁴ and women underachieve relative to men at *some* law schools.¹¹⁵

On the other hand, “women seem to do better than men on conventional measures of success such as grades and membership on law review staffs and editorial boards.”¹¹⁶ Adducing no evidence of discrimination in reading blue-books, *Elusive Equality* recommends that when grades for men and women are not in balance, professors should consider take-home exams to allow students to type their answers because “handwritten exams can reveal gender to some readers (irrespective of whether they try to determine the writer’s gender).”¹¹⁷ They further recommend that the Law School Admissions Council create a National Committee on Gender Issues in Law Schools¹¹⁸ and that every dean establish a Standing Committee on Gender.¹¹⁹ The study influenced an ABA committee to create an elaborate questionnaire and to urge its use in every law school to evaluate the gender climate.¹²⁰

The Law School Admissions Council (LSAC) created its own report on women in legal education in 1996.¹²¹ Authored by Linda Wightman two years after the release of *Becoming Gentlemen*, the report announces a clear warning to readers in this area:

Where gender differences exist, social scientists, especially educators, need and want to study and understand them. [But] it can be as destructive to the goal of improving the educational environment and opportunities for women to exaggerate gender differences as to ignore them. Clearly, ignoring problems allows them to persist. But exaggerating them perpetuates myths and distorts reality, allowing significant achievement by women to go unrecognized or to become lost among concerns of underachievement and alienation.¹²²

This report portrays an improving, if still not ideal, law school environment for women. Women’s grades in the first year were lower than those of men to a statistically significant degree, but since “less than 1 percent of the variance in

113. Id at 4.

114. See id at 5.

115. Id at 8.

116. Id.

117. Id at 13. Mary Becker may have originated the idea that such discrimination based on handwriting exists. See Dusky, *Still Unequal* at 24 (cited in note 93). Whatever its origin, Monroe Freedman accepts it. See Monroe Freedman, *Stereotyping Women Law Students*, *Legal Times* 26 (Mar 20, 1995).

118. See Dusky, *Still Unequal* at 6 (cited in note 93).

119. See id at 20.

120. American Bar Association Commission on Women in the Profession, *Don’t Just Hear It Through the Grapevine: Studying Gender Questions at Your Law School* (1998) (Mary Becker, principal author).

121. See text accompanying note 2. Special breakdowns for minority women were provided in the report, but they will not be analyzed here.

122. American Bar Association, *Don’t Just Hear It Through the Grapevine* at 26 (cited in note 120).

first-year grades can be explained by gender,”¹²³ the disparity was “not large enough to be of practical significance.”¹²⁴ Instruction quality and course appeal were consistent with men and women’s expectations.¹²⁵ Male and female students found little difference in their instructors’ supportiveness and concerns with issues of justice.¹²⁶ And the lower self-image of women compared to men at the end of the first year reflected the gap existing at the beginning of law school.¹²⁷ Nevertheless, the report suggests that the law school environment may well be affecting women adversely and that further study is needed.¹²⁸

It may be helpful to stop for a moment and take stock of the state of legal scholarship on the subject of women at the end of 1996. On the one hand, Weiss and Melling, the Penn Researchers, and the ABA Committee had painted a depressing picture of life in the academy for women law students. At the same time, the Brooklyn and LSAC reports were fairly upbeat. One would have thought that once contradictory findings emerged, researchers would speak more cautiously than before about gender climate. For the most part, however, this has not been the case.

To be sure, a report jointly sponsored by the American Bar Foundation and the Spencer Foundation functions as a model of restraint.¹²⁹ Here are the relevant conclusions of its exhaustive ethnographic study of one aspect of the debate, gender difference in class participation: (1) Female students “participated more in the moderate-sized classes . . . that were taught by women in non-elite schools.” (2) Male students spoke disproportionately more in classes taught by men. And, (3) in general, gender disparities tended to be greater in the elite schools.¹³⁰ The authors end the report with pleas for more study along the lines they have initiated and for engagement with their work. This work, they insist, should not be ignored as “a blurred view in which nothing matters in any systematic way. [It should be seen, rather, as] a more contextual systematic vision that pushes us to a better understanding of the richly patterned tapestry that is social interaction in any setting.”¹³¹ The reader should compare this with the

123. Id at 11.

124. Id at 26. See also Jean Love, *Twenty Questions on the Status of Women Law Students*, 11 Wis Women’s L J 405 (1997) (concluding that women were doing as well as men with respect to grades at the University of Iowa, but that “eternal vigilance” was necessary to ensure “full equality in the legal profession”). Id at 405, 411. See also Banks, 38 J Leg Educ at 137, 146 (cited in note 94).

125. See American Bar Association, *Don’t Hear It Through the Grapevine* at 72 (cited in note 120). This point is relevant only if we assume that students had the same expectations for male and female professors, an assumption that seems fair absent any comment to the contrary.

126. See id at 50, 73.

127. See id at 73.

128. See id at 27.

129. Elizabeth Mertz, Wamucii Njogu and Susan Gooding, *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J Legal Educ 1 (1998).

130. Id at 3.

131. Id at 86.

Penn Researchers' "bombshell" announcement.¹³²

As suggested, despite the qualifications and pleas for caution about these gender findings, scholars continue to see law schools through dark-colored glasses. As the authors of a recent essay report, many women and some men "experience frustration, or alienation, or both, because of law schools' failure to engage and develop the full range of intellectual capacities necessary to successful and responsible practice."¹³³ The authors, who made no attempt to survey men's attitudes, look forward to "constructive and far-reaching change."¹³⁴

A 1997 graduate of Yale Law School tries to fill in the details of the contemporary environment for women law students in a harrowing article, *Just Trying to Be Human in This Place: The Legal Education of Twenty Women*.¹³⁵ Finding the Weiss and Melling article inspiring,¹³⁶ indeed "exhilarating," Paula Gaber conducted or supervised "random"¹³⁷ extensive interviews with *female* classmates. The 110-page report presents their Yale education as a grim experience with virtually no redeeming value.

Obviously, only a small fraction of Gaber's findings can be presented here. Confirming other accounts of the law school classroom, women complained about men dominating classroom discussion¹³⁸ and about stereotypically male values. When "a woman says something that's more visceral, or more emotional . . . it tends to be . . . debunked by other people."¹³⁹ Very few of the women reported approaching professors after class or during office hours.¹⁴⁰ Of two women who spoke a lot: "[T]hey were really quite pathologized in the sense that I would see the looks on people's faces, like, 'Oh God, she's talking again.'"¹⁴¹ About a small group: "There were only about three women who said

132. See text accompanying notes 18-20.

133. Berger, et al, 73 NYU L Rev at 1025 (cited in note 18). Perhaps the authors' most interesting interpretation is that the Wightman article tends to support *Becoming Gentlemen's* central critique. Id at 1041.

134. Id at 1025.

135. Paula Gaber, *Just Trying to Be Human in This Place: The Legal Education of Twenty Women*, 10 Yale J L & Feminism 165 (1998).

136. Id.

137. Id at 173.

138. Id at 183. "Whereas the women want to be prepared and say something they think is intelligent . . . men just spout off." Id at 184. "[They were] intimidating and so focused on speaking in class, on learning the rules of the game . . . to get the kinds of jobs they wanted." Id at 185. "I just felt inhibited, and I probably should have spoken up more." Id at 196.

139. Id at 197. That women find themselves in this position follows from the notion of different reigning epistemologies. See text accompanying note 102. *Connected knowledge*, associated with women, is based on the conviction that "the most trustworthy knowledge comes from personal experience" and women "who were extraordinarily adept at abstract reasoning preferred to start from personal experience." See Belenky, et al, *Women's Ways of Knowing* at 112-13, 201-02 (cited in note 51). Men, being doubters, would naturally prick the bubble of anyone assuming her epistemology was sound.

140. Gaber, 10 Yale J L & Feminism at 205 (cited in note 135). "I wish I'd been able to relate to more of the faculty in a more constructive way," reports one witness, "but I couldn't, because the place was just too creepy." Id at 206. "I don't think I have any desire to approach the professors." Id at 209.

141. Id at 192.

anything . . . I mean it was horrible, it was just absolutely horrible.”¹⁴²

The testimony is almost uniformly painful: “I thought I was the stupidest person here . . . I just felt like I was a fraud.”¹⁴³ “I feel like I’m not authorized to ask a question.”¹⁴⁴ Of an early torts class: “Something came up that I thought really had to do with Marxist theory. So I ran down after class—I was so excited—and said, ‘This has to do with [Marxist theory].’ [And the professor] looked at me like, ‘You dumb-ass, this is a first year Torts class. We don’t talk about things like that here.’”¹⁴⁵ “[T]here is a big problem in the classroom. A big gender problem . . . [T]he Socratic method, or even a modified Socratic method, has a lot to do with it.”¹⁴⁶ One student is apparently representative of the group when she concludes about the faculty, presumably largely male: “[H]alf the professors here are not good teachers. They don’t care about teaching.”¹⁴⁷

For Gaber the predominant theme of her classmates’ experience “was a series of events that caused loss of self-esteem”¹⁴⁸ and “diminished confidence regarding all aspects of their academic experiences, including willingness to participate in class, writing skills, and interaction with faculty.”¹⁴⁹ Respondents reported “disengagement from the legal subject matter, the law school community, and their chosen profession of law.”¹⁵⁰ Incremental change is not the answer, Gaber says, echoing the Penn Researchers. “[I]n some sense it’s like a microcosm of society, you’d have to dismantle the entire structure . . . it’s so bad here.”¹⁵¹ Gaber and her classmates offer only a few recommendations. Eighteen of the twenty women called for hiring more women and faculty of color.¹⁵² Other suggestions were to provide more information to women about law school culture and, hardly unreasonable, to require faculty to maintain regular office hours.¹⁵³

In the last analysis, notwithstanding the clear feminist influences in her work, Gaber aspires to what she considers a male experience in law school. “Whatever failure women have,” she writes, “they ascribe to themselves personally as opposed to blaming the environment, and I think men are better at not internalizing their failures and saying, ‘Well, there were all these external reasons

142. Id at 198.

143. Id at 180.

144. Id at 191.

145. Id at 195. The professor’s sex is unspecified.

146. Id at 200.

147. Id at 203.

148. Id at 249.

149. Id.

150. Id.

151. Id. (On information and belief, Yale Law School is in the middle of a major gender study. Perhaps Gaber’s article was the inspiration.)

152. Id at 249-50.

153. Id at 255. Presumably the latter suggestion is tied to the complaint previously discussed that male professors are not accessible to students. See text accompanying note 140.

for why I didn't succeed."¹⁵⁴ Gaber ends her article with a haunting quotation from an interviewee who wishes she could "have had a great [law school] experience, like it is for most of the first-year guys I talk to now, who are like, 'It's wonderful, I love it here!' I so envy them. I so wish my experience had been like that."¹⁵⁵

A number of the foregoing concerns are presented succinctly in a recently published primer for entering law students, *What Every First-Year Female Law Student Should Know*.¹⁵⁶ Authored by Morrison Torrey, Jennifer Ries, and Elaine Spiliopoulos, the primer warns students at the very outset of a study showing that 41 percent of females did not feel as intelligent after their first year of law school as before.¹⁵⁷ The corresponding number for males was 16.5 percent.¹⁵⁸ The authors cite the following as contributing to women's distress: walls with portraits of alumni and jurists, all of whom are male (and white);¹⁵⁹ the Socratic method which puts women off and thus causes them to speak less than men;¹⁶⁰ too few women teachers as authority figures and role models;¹⁶¹ and rampant sexual harassment by both peers and professors.¹⁶² In sum, the authors say, "There can be no doubt that law schools . . . favor men over women in almost every way imaginable."¹⁶³

The solutions to these problems? The authors are not timid: (1) Because of handwriting discrimination in grading, take-home exams, which can be typed, should be employed.¹⁶⁴ (2) To provide safe havens for women, in some instances course enrollment should be limited to women.¹⁶⁵ (3) More women professors should be hired.¹⁶⁶ (4) The Socratic method should be eliminated or substantially modified.¹⁶⁷ (5) Students should be required to take one course focus-

154. Gaber, 10 Yale J L & Feminism at 261 (cited in note 135). Would gender climate study scholars, one wonders, support this notion?

155. Id at 263-64. Once again, there is no mention of the frequency with which such comments were made.

156. Torrey, et al, 7 Colum J Gender & L 267 (cited in note 1).

157. Id at 267. It is hard to know what to make of this finding. Some interesting recent research suggests that there is often an inverse relationship between people's perception of their competence and the reality. See Erica Goode, *Among the Inept, Researchers Discover, Ignorance Is Bliss*, NY Times F7 (Jan 18, 2000).

158. See Torrey, et al, 7 Colum J Gender & L at 267 (cited in note 1).

159. Id at 275. "I felt the weight of the presence of those stern portraits. For me this was still not a safe space." Lani Guinier, *Lessons and Challenges of Becoming Gentlemen*, 24 NYU Rev L & Soc Change 1, 2 (1998) (speaking of her reaction to Yale at a panel discussion some ten years after graduation).

160. Torrey, et al, 7 Colum J Gender & L at 275-06, 278-79 (cited in note 1).

161. Id at 280.

162. Id at 297.

163. See text accompanying note 1.

164. Torrey, et al, 7 Colum J Gender & L at 305 (cited in note 1). Use of computers in take-home or classroom exams would not solve the problem premised on gender difference that women's writing styles and values are distinctive. No one has suggested an acceptable way to flatten out that difference.

165. Id.

166. Id at 307.

167. Id at 308.

ing on women.¹⁶⁸ And (6) accreditation should be withheld from those schools unwilling to eliminate gender bias.¹⁶⁹ Jennifer Brown takes the underlying premises of these recommendations to what would seem to be their natural conclusion: Because law school is such an “alienating experience for women,” we need a law school for women.¹⁷⁰

Among the latest chapters in this story is Linda Hirshman’s 270-page *A Woman’s Guide to Law School*.¹⁷¹ After explaining why such a guide is needed, Hirshman goes on to rate 158 law schools with a Femscore. Applying such factors as percentage of the faculty and student body made up of women and percentage of women students admitted to law review and Order of the Coif—without specifying the weights given to each factor—Hirshman finds, for example, that of the schools requiring the highest LSAT scores, Duke has the highest Femscore at 186 while the University of Chicago has the lowest at 131.¹⁷² Hirshman sums up her message to prospective students by urging them to “[m]ake demands. Ask for a schedule that has at least one woman teacher before you accept their offer [and one] that doesn’t include teachers your research has revealed will demand that you become your own worst enemy.”¹⁷³

III. THE CLIMATE FOR WOMEN LAW FACULTY

If the male law school culture turns the female student into her “own worst enemy,” what does it do to female faculty? I discuss this matter under two headings: the climate provided by faculty and administration and that provided by students.

A. ADMINISTRATIVE AND FACULTY CLIMATE

A pair of recent articles in the *Journal of Legal Education* spells out the complaint against law schools for their treatment of women law academics. The first article, by Marina Angel, entitled *The Glass Ceiling for Women in Legal Education*,¹⁷⁴ stresses (1) the low percentage of full-time women tenure-track faculty (29.3 percent in 1998); (2) the low percentage of women new hires from the Faculty Appointments Register (43.2 percent in 1996–97); (3) the high percent-

168. Id.

169. Id at 309.

170. Jennifer G. Brown, “To Give Them Countenance”: *The Case for a Women’s Law School*, 22 Harv Women’s L J 1, 2 (1999).

171. Linda Hirshman, *A Woman’s Guide to Law School* (1999) (cited in note 57). Hirshman teaches at Quinnipiac Law School.

172. Id at 139-40. The scoring method is not specified; for what it’s worth, the highest score reported is 214 (Southern), the lowest 114 (Campbell). No Femscore is provided for Touro.

173. Id at 272.

174. Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J Legal Educ 1 (2000).

age of women in low-status (for example, legal writing) positions (66.9 percent); and (4) the increasing use of part-time help in academia generally. I responded to Angel several months later in the same journal¹⁷⁵ by pointing out that (1) women's representation on law faculties has grown dramatically in recent years; (2) women are hired at rates far higher than their proportions as Appointments Register applicants and that indeed they now make up about 50 percent of new assistant professorships; (3) women may be applying for legal writing jobs in disproportionate numbers and that these positions are at least arguably different in nature from tenure-track positions; and (4) the growth in part-time positions cannot reasonably be interpreted as anti-female in intent.

Angel has just published a reply that takes two tacks: First, the proportion of women who are getting assistant professor jobs is declining and, second, the move to a part-time faculty does prejudice women.¹⁷⁶ Angel explains that women's representation in the Faculty Appointments Register and as a percentage of new assistant professors declined this past year. But again, since women assistant professors represented almost 50 percent of new hires this year—they must have gotten jobs by applying to schools directly or by being hired through the Register at substantially higher rates than men—her complaint is just cant, unless, of course, women have a right to 50 percent or more of the law school teaching jobs, an argument she does not explicitly make. Her second charge is equally disposable. Angel provides no evidence that the general move to a part-time professorate in academia affects women disproportionately, much less that it is matched by a similar development in law schools. That being the case, the practice fails to support Angel's title and central image, *The Glass Ceiling for Women in Legal Education*.

The second article, by Richard Neumann, is more empirically oriented.¹⁷⁷ I focus on two of his principal observations. The tenure rate for new women law teachers is 61 percent versus 72 percent for men. What Neumann does not do is explore why this may be the case. If, as feminist scholars have not hesitated to point out, women are much more likely to follow their spouses on their career paths and to undertake the lion's share of family domestic burdens,¹⁷⁸ it would seem inevitable that there would be *some* difference in tenure rates.

Neumann's second observation deals with dean positions. Neumann reports that only 12 percent of American law schools currently have female deans.¹⁷⁹

175. Dan Subotnik, *Seeing Through the "Glass Ceiling": A Response to Professor Angel*, 50 J Legal Educ 450 (2000).

176. Marina Angel, *Comments in Reply: It's Becoming a Glass House*, 50 J Legal Educ 454 (2000).

177. Richard Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J Legal Educ 313 (1999). A fuller response to Neumann than is developed in this Article can be found in Dan Subotnik, *Bah, Humbug to the Bleak Story of Women Law Faculty*, J Legal Educ (forthcoming).

178. See Joan Williams, *What Stymies Women's Academic Careers? It's Personal*, Chronicle Higher Educ B10 (Dec 15, 2000); Joan Williams, *Unbending Gender: Why Family and Work Conflict and What to Do About It* 2 (Oxford 2000).

179. See Neumann, 50 J Legal Educ at 313 (cited in note 177).

The question, however, is whether women are applying for these positions in anything like proportionate numbers. The answer would appear to be no. A recent survey I undertook of law school dean searches elicited the general response that "very few" women were interested in those jobs, at least to the extent of submitting applications. Unless women are discouraged from applying, it is hard to make out a case of an administrative "glass ceiling."

B. LAW SCHOOL STUDENTS' PERCEPTIONS OF WOMEN FACULTY

In a famous, though perhaps now dated, experiment conducted by Carrie Menkel-Meadow in 1981, when students were asked to describe the law, they depicted it as "logical, rational, rigorous . . . intellectual . . . analytical, difficult, exacting."¹⁸⁰ Menkel-Meadow next asked her students to describe differences between men and women. Men were seen as "rational, strong, hierarchical, aggressive . . . efficient."¹⁸¹ Women, by contrast, were "dependent, nurturing, emotive, weak, caring . . . egalitarian."¹⁸² The conclusion is obvious: the law is of the male gender.¹⁸³

Citing the Menkel-Meadow study, Kathleen Bean works out the related elements that make for a destructive gender gap.¹⁸⁴ First, women faculty enjoy less credibility than men faculty among students.¹⁸⁵ Second, the loss of credibility will generate hostility in students as they decide that they are receiving an inferior education.¹⁸⁶ Third, the sense of being cheated will consume valuable energy, which will prevent students from properly focusing on their studies.¹⁸⁷ And last, this distraction will generate more anxiety, which will increase the blame placed on women.¹⁸⁸

Bean goes on to discuss three historical responses by women to these outcomes. Some women academics have silenced the female voice within them. But this, she claims, is a mistake because, among other things, traditional female gender traits are "much more valuable than society has acknowledged."¹⁸⁹ Other women teachers have adopted "traditional female gender traits for behavior in

180. Carrie Menkel-Meadow, *Women as Law Teachers: Toward the "Feminization" of Legal Education*, in *Humanistic Education in Law: Essays on the Application of a Humanistic Perspective to Law Teaching* 16, 18 (Columbia 1981).

181. *Id.*

182. *Id.*

183. For a recent and highly developed argument in support of this conclusion, see Baer, *Our Lives Before the Law* at 16-94 (cited in note 4).

184. Kathleen Bean, *The Gender Gap in the Law School Classroom: Beyond Survival*, 14 *Vt L Rev* 23 (1989).

185. *Id.* at 27. Bean does not specify whether it is only men, or both men and women, who devalue women instructors.

186. *Id.* at 29.

187. *Id.* at 35.

188. *Id.* at 36.

189. *Id.* at 37.

the classroom.”¹⁹⁰ This cannot work well either, according to Bean, for the female voice is not only incongruous with the role being played—that of law professor, which is male—but it stereotypes women.¹⁹¹ Last, and most commonly, women have struck some balance between the two.¹⁹² But while this approach has practical benefits, it is not ideal because it will not lead to elimination of the gender gap.¹⁹³

While Bean does not offer much tangible evidence of the special burdens on women law academics, the ABA report does. Students, it found, test women faculty with interruptions to show disrespect. On student evaluations they write such things as “I enjoyed watching her jiggle when she wrote at the chalkboard.”¹⁹⁴ In short, if professors make life unnecessarily difficult for some students based on gender as the Penn Researchers report, the reverse is also true.¹⁹⁵

The foregoing strains on women academics may be the least of their problems; for it may not only be morale that is affected by the attitude of students but also, and more importantly, female faculty remuneration and even retention and tenure. If, as has been charged, students subject women teachers to damaging stereotypes on student evaluations,¹⁹⁶ is it likely that an administration that organizes the cumbersome faculty evaluation process ignores the results? The very age of this theme raises a more pressing question. Even assuming the existence of strong bias against women fifteen years ago, do the underlying factors still operate today when the percentage of women students and faculty members is so much higher? That question—on which this Study will have more to say later—has recently been answered in the affirmative.

The affirmative answer comes from Christine Farley, a former Associate-in-Law at Columbia Law School. Learning of a previous study suggesting that women teachers were perceived as less competent than men, she undertook her own major investigation of teacher evaluations at an unspecified top ten law school.¹⁹⁷ Women professors, Farley found, faced two criticisms: they were nei-

190. Id at 39.

191. Id.

192. Id at 46.

193. Id at 46-47. Bean tries to formulate a different approach, which because of its complexity is not discussed here. Id at 48-55.

194. See American Bar Association, *Elusive Equality* at 4 (cited in note 110).

195. The ABA report spares neither the faculty nor the administration when assigning blame for the poor climate in the law schools.

196. Id at 5, 22. See also Bean, 14 Vt L Rev at 35 (cited in note 184); Elyce H. Zenoff and Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don't Know About Women Law Professors*, 25 Ariz L Rev 869, 879 (1983); Ellen Sollender, *The Story of a Self-Effacing Feminist Law Professor*, 4 Am U J Gender & L 249, 254 (1995) (claiming that her job was threatened in the 1970s because of bad student evaluations resulting from failure to use Kingsfieldian methods). See also Dusky, *Still Unequal* at 88 (cited in note 93) (quoting Rhode: “Students in both classroom and laboratory studies evaluate women’s performance more harshly, particularly those who violate feminine stereotypes of warmth and deference.” For more claims to this effect, see Christine Farley, *Confronting Expectations: Women in the Legal Academy*, 8 Yale J L & Feminism 333, 336 n 18 (1996).

197. See Farley, 8 Yale J L & Feminism at 333, 337 n 19 (cited in note 196).

ther “man” enough nor “woman” enough for teaching the law.¹⁹⁸ They were deemed unable to control the class, unprepared, disorganized, unclear and confusing.¹⁹⁹ In addition, they lacked objectivity and were too political.²⁰⁰ Paradoxically, they were also “too harsh, curt, or condescending” and insufficiently “supportive.”²⁰¹ Women’s appearance was commented on, a sign to Farley that women were not taken seriously.²⁰² Even when comments were positive, the evaluations of women professors differed from those of men. Women were praised for being “approachable, accessible, helpful, interested, concerned/committed, enthusiastic, and creating a congenial atmosphere” while men were lauded for being “masters of their subject matter.”²⁰³

To help in our understanding of differences in the ways male and female law professors are evaluated, Farley offers the tables reproduced on the next page.²⁰⁴ Her conclusion in brief: The reasoning in *Bradwell v Illinois*²⁰⁵—that women are too delicate and timid for the rude world of law practice—“is alive and well in students’ course evaluations.”²⁰⁵

198. Id at 337.

199. Id at 338.

200. Id.

201. Id at 339.

202. Id at 344. Farley supplies several examples, of which one stands out: “Loved your show, babe.” Farley observes that even if there was a male equivalent for “babe,” “I seriously doubt that a man would ever find this comment in his evaluation.” Id at n 37. What Farley does not ponder is whether such a comment on an end-of-the-year evaluation has any further meaning. Maybe the student liked the teacher’s style and evaluated her as being excellent across the board. Was Robert Shapiro out of bounds when he referred to Marcia Clark’s legs as “great”? Jeffrey Toobin, *True Grit*, New Yorker 28-30 (Jan 9, 1995). To be sure, these comments are irrelevant to the business at hand. But is business the only value, particularly for those who came of age during the sexual revolution? Are attraction and respect necessarily mutually exclusive? Can one, for example, both desire and respect a lover or a spouse? For what it’s worth, the woman who has received the most student comments about her appearance over the years at Touro—perhaps a half dozen times—is also the highest-rated female professor, and perhaps the highest-rated professor overall.

203. Farley, 8 Yale J L & Feminism at 339-40 (cited in note 196).

204. Id at n 24. Farley explains that these tables are “in part based” on words and comments used by first-year students over a period of three years in course evaluations. To compensate for the disproportion of male teachers the numbers in the female column were multiplied by 3.2. Id.

205. Id at 349, 358.

Comments Overrepresented on the Evaluations of Female Professors²⁰⁶

	Female professors	Male professors
Not suited to large class / lacks control	71	1
Not knowledgeable / unprepared	20	2
Unprofessional	13	0
Defensive	16	0
Biased / has agenda	16	0
Patient / supportive	36	18
Approachable / accessible / available	87	54
Congenial / caring	103	74
Enthusiastic	39	17
Referred to by first name	7	0
Hostile atmosphere	13	6
Harsh / acerbic / rude	26	12
Disrespectful of students / not empathetic / not encouraging	39	9
Lacks a sense of humor	3	0
Too tough / strict / stern	10	0

Comments Overrepresented on the Evaluations of Male Professors

	Female professors	Male professors
Knowledgeable	96	157
Demanding / challenging / rigorous	32	42
Logical / analytical	0	9
Animated, dynamic lecturer / entertaining / good stories	19	129
Good sense of humor	28	133
Professional	0	3
Respectful of students	19	35

206. That is, comments disproportionately made about female professors.

What, specifically, should be done about differences in the way women are treated in faculty evaluations? The ABA report supplies an answer: "The Standing Committee On Gender should review student evaluations . . . and consider ways in which evaluations could provide better feedback with less bias. The Committee," the report continues, "might also add questions or request information that might make bias, if present, more obvious (which is a first step toward its elimination). For example," the report suggests, "it might be useful to have students indicate their own gender on evaluation forms."²⁰⁷

Asking student evaluators to self-identify by gender is one of the things attempted in the following Study. The full benefits of doing so should now be clear. If, as Catharine MacKinnon says, women "go dead in the eyes like ghetto children, unlike the men, who come out of law school glowing in the dark,"²⁰⁸ and if, as Elizabeth Schneider argues, "Women are given the feeling that if they speak out of their own experiences or their own ideas, or express ideas that are not fully developed, they will be dismissed,"²⁰⁹ those sentiments should be reflected in differences in the way women and men evaluate their teachers, both male and female. Comparing men and women's evaluations of their instructors, then, will help to answer the question of whether and how, as a pedagogical matter, the legal academy should be more attentive to the needs of its female students.

IV. THE TOURO STUDY

Surprisingly, given the substantial and often tendentious literature on women in law school (of which, as we have seen, the Penn Researchers make up only a small part), no one, it seems, has ever compared end-of-semester evaluations of individual law faculty members by gender of the student evaluator on a class-by-class basis. The advantage of beginning with this approach should be apparent; since most law school classes are evaluated every semester, students would be comfortable with such an arrangement.²¹⁰ The initial approach used here offers another advantage in that gender was played down. The questionnaire set forth in Appendix I was given in all classes in fall 1999 and contained no leading questions on the subject of gender. Giving students the opportunity to talk about gender, without encouraging them to do so, allowed for measurement of the strength of any gender-based responses to law school life at Touro.

Tables I and II in Appendix III summarize the initial results obtained by studying means and t-scores.²¹¹ In three of the five categories evaluated—

207. See American Bar Association, *Elusive Equality* at 23 (cited in note 110).

208. See text accompanying note 80.

209. See Dusky, *Still Unequal* at 26-27 (quoting Schneider) (cited in note 93).

210. The Penn Researchers' questionnaire, by contrast, was distributed at some unspecified time during the semester.

211. A t-test evaluates "hypotheses about means of normal distributions when the standard devia-

“overall teaching ability,” “openness to consultation,” and “present material clearly”—there was no statistically significant difference between the reactions of men and women students. In two of the five—“sustain student interest” and “treatment of students”—differences were statistically significant (meaning that they were unlikely to have arisen by chance). To evaluate these differences further, Table III in Appendix III breaks down results by year of study. It becomes quickly apparent that the male-female gap was produced entirely in year one. This result replicates the Penn Researchers’ findings. In years two and three, however, male-female student opinion was about the same, with evaluations dropping for both groups in year two and rising considerably for both groups in year three, as students were ready to graduate.

The most important result of the study is that, although statistically significant, the *effect size* of the disparities in question is quite small, 0.13 and 0.15, respectively, on a five-point scale. A “hostile learning environment for a disproportionate number”²¹² of women students is simply not indicated when the mean score for both men and women is between excellent and very good and where again there is no appreciable difference in the overall evaluation of teachers by male and female students (see Question 18, Appendix I).

Students were also given the opportunity to provide comments, although, obviously, they were not obliged to do so. The table on the next page highlights the results.

tions are unknown.” Webster’s Ninth New Collegiate Dictionary 1269 (1991).

212. See text accompanying note 20.

Comments about Male and Female Professors²¹³

	Male professors	Female professors
Knowledgeable	102	73
Great / excellent / outstanding teacher	126	123
Very good teacher	14	18
Good / fair teacher	16	18
Well prepared	19	33
Enthusiastic / enjoyable	50	40
Clear / understandable	40	47
Interesting / creative / intelligent	9	18
Good stories / animated / sense of humor	26	4
Approachable / accessible	26	29
Respects students	13	18
Challenging / inspiring / stimulating	2	33
Professional	2	22
Wonderful human being / very nice person / caring / compassionate / supportive	24	54
Confusing / unclear / not helpful	66	69
Abrasive / condescending / unresponsive / rude / impatient	43	11
Egotistical	8	0
Uncaring / miserable human being	6	0
Can't control class	0	29

213. Special thanks go here to Dina Canger, who was instrumental in classifying, organizing, and interpreting the data. The table is based on student responses in thirty-seven classes. The only fall 1999 class not included in this tabulation is Legal Methods, which was excluded to make conclusions more comparable to those of Farley, who, likewise, did not tabulate results for that course. Since twenty-nine of the classes were taught by men and eight by women, a factor of 3.625 (29/8) was applied to the right hand column. Comments made fewer than four times for both males and females are omitted.

A caveat before results are discussed. To allow for comparability I have followed the Farley model.²¹⁴ Thus, I simply computed the number of times a class of comments was made.²¹⁵ The problem in this approach is that it hides the number of different professors who elicited the comments. Thus, we would not know based on this table whether a single male professor was rated “abrasive” by forty-three students or whether forty-three male professors (if there were that many) were rated that way by one student each. There is nothing wrong with doing things as Farley did. But at least some sense of the distribution of the comments is needed for a clear picture. So, comments made seven or more times about an individual professor were isolated. “High concentrations” of comments so determined for male professors were found in the following areas: “confusing” (n=3, 77 percent);²¹⁶ “abrasive” (n=3, 65 percent); “knowledgeable” (n=3, 32 percent); and “enthusiastic” (n=1, 9 percent). The only “high concentration” for women professors was for “can’t control class” (n=1, 100 percent).

The most meaningful conclusion would seem to be that appreciable differences in the evaluations of men and women exist only in a few categories. In this respect results were inconsistent with those obtained by Farley.²¹⁷ As for categories where differences did appear—“challenging,” “professional,” “wonderful human being,” “abrasive”—far from being evaluated more harshly, Touro women stand out as models for men.²¹⁸ That Touro women faculty may not be as good at storytelling, etc., as the men may mean that storytelling is something for them to learn. Finally, it should be noted, not a single comment among the hundreds received referred explicitly to the gender of the instructor or student, his or her physicality, or, with only a couple of exceptions each involving a male, appearance.²¹⁹

The questionnaire just referred to tested only a few of the charges leveled by the Penn Researchers. The textual analysis of comments immediately above, moreover, does not distinguish between responses based on the gender of student evaluators.²²⁰ So a second, more comprehensive questionnaire was administered. The questionnaire used for this purpose, prepared by the author, appears

214. See text accompanying note 196. For purposes of comparability the categories approximate those used by Farley. It must be emphasized that, as in Farley’s study, there is no breakdown here between responses by male and by female students. A comparison of male and female student responses, which is critical to our project, is attempted below.

215. We speak here after the adjustment specified in note 214.

216. Numbers in parentheses signify number of faculty members of the specified sex who qualify as “high concentrators.”

217. See text accompanying notes 197-207.

218. Since all “can’t control class” responses were elicited by one teacher, they are not deemed meaningful.

219. Comments such as “she is a nice person” are not deemed gender based. Here is what students said about attire: “put a tie on,” “I loved his colorful shirts,” and “dresses like GQ Magazine.”

220. If the data had been organized properly, this could obviously have been done. The author faults his inexperience.

in Appendix II.²²¹

Tables IV and V in Appendix III are the second questionnaire analogues to Tables I and II. Tables VI, VII, and VIII evaluate who, if anyone, dominates class discussion and why students might be reluctant to speak. Here again, the conclusions are dramatically reassuring for legal education. There are no statistically significant differences between the means of male and female responses for eight of the twelve variables, including “calling on students without regard to gender” and “offense taken to gender-insensitive language.” Where there is a statistically significant difference, for example, with respect to the complaint about “too much black letter law,” women disagree slightly more than men. That is, they want slightly more, not less, black letter law. As for “this class is a more difficult, less satisfying experience for me” than for the opposite sex, women disagreed appreciably more than men.

With respect to comfort with the Socratic method, women respondents were marginally more likely than men to think that men were more at ease with that method. With respect to reluctance to speak, perhaps the most salient finding is that of 214 women respondents, only nine felt silenced because of disrespect shown by the opposite sex. In comparison, seven men of 222 felt silenced by the women in the class.

Students’ comments support these conclusions. Male and female students’ evaluations of their professors were indistinguishable in terms of tests for gender bias discussed in this Article. To be sure, six female students—out of about 100 students who offered comments—did complain about domination by men of class discussion. Too much, however, should not be read into this finding. All six complaints were made against one male instructor in one class.

Finally, there is some indication that men dominate classroom conversations. On the other hand, the great majority of women respondents disagreed. In any event, there is little evidence of any overall difference in the reluctance of men and women to speak in class and virtually no evidence that reluctance to speak is tied to disrespect shown to women by men students.

V. DISCUSSION

If the data and interpretations in this study are sound, how have so many law academics managed to persuade themselves that law school is a parade of horrors for women? How have they sunk into the catastrophizing and paranoia in the haze of which male law professors are seen as consciously or unconsciously discriminating against women by grading exams in accordance with the

221. Using the same questionnaire as did the Penn Researchers would have theoretically provided greater comparability. We decided against it, both because, as suggested, the Penn Researchers have never provided the quantitative results they presumably obtained (see text accompanying note 84) and because our questionnaire could test a number of themes that have been introduced only recently into the sex climate literature. See, for example, text accompanying note 140.

gendered handwriting of students?²²² Why, in sum, are so many women law professors of all feminist persuasions so invested in bad news?²²³

Todd Gitlin, a prominent left-leaning social critic, frames the question in a different way in a 1995 book. "Why," he wonders, "are so many people attached to their marginality and why is so much of their intellectual labor spent developing theories to justify it? Why insist on difference with such rigidity, rancor, and blindness, to the exclusion of the possibility of common knowledge and common dreams?"²²⁴ Gitlin explains that America is a "vertiginous . . . society founded on rootlessness, devoted to self-creation, worshipping evanescence, stuffing its spiritual voids with the latest gadgets."²²⁵ It is this setting of unsettledness, according to Gitlin, that leads to the cant of identity politics with its attendant binary thinking: "This is a person of Type X, not Type Y."²²⁶ Gitlin is no doubt on to something, but the culture wars in recent years have hardly been limited to the United States.

One does not have to be a Marxist/materialist to see more in the phenomenon of law school gender climate studies than a battle over moral bragging rights, though that is a good part of it.²²⁷ Mary Joe Frug may be helpful here. The "anger and pessimism connected with negative feminism" (her term), she writes, "produces [sic] a more positive political residue than the form of sentimental boosterism that often accompanies cultural feminism."²²⁸ The gender climate phenomenon, surely an expression of "negative feminism," may well be

222. Monroe Freedman does claim the ability to discern sex from handwriting but that is hardly evidence that women are discriminated against on this basis. See text accompanying note 117.

223. "One thing I learned," writes law professor Catharine Wells, "is that I should not overlook the . . . sexist incidents in my own life." This lesson, she continues, "has grounded me in my own perspective. I no longer think about whether I *should* be offended. Instead," she concludes, "I am able to know that I *am* offended. The result is a feeling of wholeness." See Catharine Wells, *The Theory and Practice of Being Trina*, 81 Minn L Rev 1381, 1387 (1997) (emphasis in original). Circumstances surrounding this Article also evidence the point. A half year ago, while I was in the early stages of my work, a female colleague reminded me that a second female colleague who had been chair of our Diversity Committee had done a major gender climate study at the school and that the results "contradicted" those of the Penn Researchers. The results, which might have led to improvement of the gender climate at the school, have not been released to the student body or to the faculty. In the same vein is the refusal of another female colleague, after examining the questionnaire herein, to allow its distribution to her class on the stated grounds that it was hopelessly flawed. What message can be extracted here other than that good news is sometimes bad news? Or no news?

224. Todd Gitlin, *The Twilight of Common Dreams* 32 (Metropolitan 1995). Katie Roiphe has argued that many feminists "vie for the position of being silenced." See Roiphe, *The Morning After* at 34 (cited in note 67).

225. Gitlin, *The Twilight of Common Dreams* at 127 (cited in note 224).

226. Id. A we/they, black/white polarity is about the lowest form of intellectual development according to Belenky. See Belenky, et al, *Women's Ways of Knowing* at 9-10 (cited in note 51).

227. See Marcia Westcott, *On the New Psychology of Women: A Contemporary View*, in Mary Roth Walsh, ed, *Women, Men, and Gender* 362 (Yale 1997) ("Whereas traditional psychology once thought of the female as 'l'homme manqué,' the new women's psychology now posits feminine relational traits as 'personne supérieure.'").

228. Mary Joe Frug, *Sexual Equality and Sexual Difference in American Law*, 26 New Eng L Rev 665, 673 (1992).

the result of a political strategy of manufacturing anger.

Are oppressed groups, as opposed to oppressing groups, capable of thinking in such manipulative terms? Randall Kennedy provides an answer:

[U]nless inhibited every person and group will tend toward beliefs and practices that are self-aggrandizing. This is [not only] true of those who inherit a dominant status[b]ut also of those who inherit a subordinate status. Surely one of the most striking features of human dynamics is the alacrity with which those who have been oppressed will oppress whomever they can once the opportunity presents itself. [Thus] it is not premature to worry about the possibility that . . . historically subordinated groups will abuse power to the detriment of others.²²⁹

Kennedy's warning would seem relevant when someone declares during a meeting on appointments, "The last thing we need around here is another white male" or "We don't need any more white . . . males here,"²³⁰ or when the faculty is induced to appoint an untenured faculty woman to the Promotion and Tenure Committee to "reflect the concern of . . . women."²³¹

Controlling such self-serving idealism is extremely difficult. Identity politics stands on a different footing from other politics. A libertarian who argues for the abolition of tenure will quickly hear opposition from members of her own faculty. Statements of identity position are not so hospitable to challenge. Christine Littleton frames the problem for men wanting to enter the discourse on gender relations. "[W]omen's experience [is] a necessary prerequisite for doing feminism," she writes, and "men who wanted to use the label 'feminist' would have to spend a significant number of years living as women to qualify."²³²

229. Randall Kennedy, *My Race Problem—and Ours*, Atlantic Monthly 55, 65 (May 1997).

230. These statements were made in the presence of the Author by two different women professors at Touro faculty meetings, circa 1993, just about at the point that the school had stopped hiring. The faculty, excluding Legal Methods teachers, was then approximately 25 percent female.

231. Touro enacted this provision in 1990 (when only a handful of faculty, including one woman, were tenured) and the provision remained in effect for several years. Is this, one wonders, the inevitable reaction to portrayals of law schools as favoring "men over women in almost every way imaginable"? See text accompanying notes 1 and 163. Is it, perhaps, an example of a "protection racket"? See note 79. I do not have information on what goes on at other schools. But, who knows? In musing about her employment situation at the time she was coming up for promotion, the late Trina Grillo may have put her finger on the real purpose of identity politics in the law school setting:

Maybe, for example, we should hire all minority women with tenure. While this is not exactly a likely development, it does make a fair amount of sense—the experience of minority women faculty is so different from that of other faculty that it is hard for other faculty to make realistic evaluations.

Trina Grillo, *Tenure and Minority Law Professors: Separating the Strands*, 31 USF L Rev 747, 754 (1997).

The connection between identity politics and tenure may also be evidenced by Lani Guinier's appointment at Harvard as the first tenured black woman professor. It is important to note that at a press conference announcing her appointment, Dean Robert Clark made reference to neither her provocative writings on voting nor her stunning advocacy of a lottery system for schools and businesses in accepting students and hiring employees. See Susan Sturm and Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 Cal L Rev 953 (1996), discussed at length in Dan Subotnik, *Goodbye to the SAT, LSAT? Hello to Equity by Lottery?: Evaluating Lani Guinier's Plan for Ending Race Consciousness*, 43 Howard L J 141

If men believe that they have little to contribute to gender dialogue because they are outsiders and because women are uncomfortable having their ideas interrogated (hence the aversion to the Socratic method), men will certainly not weigh in on so highly charged a subject as the nature of women. It should not be surprising then, that of all the authors considered here for their recent scholarship on gender climate, there have been only two males.²³³ And one, as the one male out of five authors on his project, upon a show of any independence, could presumably be whipped back into line.

One could, of course, argue that women have been dominant in this area of study because they are more interested than men in the subject of women in law school. But how to explain with respect to *Elusive Equality*,²³⁴ the report of the ABA Commission on Women in the Profession, an *institutional* sponsor, that (1) the three principal writers are women, (2) all four people who “contributed significantly” to the project are women, and (3) thirteen of the fourteen Commission members who provided “thoughtful feedback” are women?²³⁵ The topic, as it has been defined, has a built-in need for male participation. Guinier and others premise their work on notions of femaleness: Women are more egalitarian; they are collaborative in nature and resist hierarchy. But such positions make sense only in relation to fundamental notions of maleness. And it is not only women who have a stake in notions of fundamental gender characteristics. Who, after all, made *Iron John* a bestseller a few years ago?²³⁶

(2000). Rather, Dean Clark introduced her as a “first-rate scholar who has produced extremely important work, [and] also as one who, by her presence, will help the school to attract other top scholars of diverse background, including more women of color.” See *Lani Guinier Appointed Professor at Harvard*, *Oakland Trib* 3 (Feb 11, 1998). If the Penn Researchers had concluded that all was well for women in legal academia, is it likely that Harvard could have successfully sold Guinier as a champion for women? In such a circumstance, women would not need a champion. I emphatically do not suggest here that the Penn Researchers cooked the books or that they are insincere. I do suggest, rather, that the law review market operates much like the tabloids. It is bad news that sells: *Law Professors Found Terrorizing Philadelphia Coeds*. This principle also helps to explain the critical condition of critical race theory. See Subotnik, 7 *Cornell J L & Pub Pol* 681 (cited in note 22); Dan Subotnik, *Critical Race Theory: The Last Voyage*, 15 *Touro L Rev* 657 (1999). Academics who consciously or unconsciously respect market forces, then, must flee from good news.

In the last analysis, the moral onus for the one-sidedness of opinion cannot be placed entirely on feminist scholars. To be sure, if these writers have manipulated gender to their advantage, the burden is on them. “The only responsible course” for intellectuals, philosopher Theodor Adorno once wrote, “is to deny oneself the ideological misuse of one’s own existence.” Theodor Adorno, *Minima Moralia: Reflections from Damaged Life* 27 (NLB 1974) (E.F.N. Jephcott, trans). But, under a more familiar standard, men are no less morally culpable. Fool me once, shame on you; fool me twice, shame on me.

232. Christine Littleton, *Feminist Jurisprudence: The Difference Method Makes*, 41 *Stan L Rev* 751, 765 n 72 (1989), quoting Christine Littleton, *Reconstructing Sexual Equality*, 75 *Cal L Rev* 1279, 1294 n 91 (1987).

233. See text accompanying notes 18 and 177.

234. See text accompanying note 110. Reference here is to the Executive Summary of the report.

235. American Bar Association, *Elusive Equality* at i (cited in note 110). Even more out of balance are contributions to the Commission’s publication, *Don’t Just Hear It Through the Grapevine: Studying Gender Questions at Your Law School* (cited in note 120). Not one of the contributors acknowledged is male.

236. Robert Bly, *Iron John* (Addison-Wesley 1990). *Iron John*, a mythopoetic analysis of men’s need to bond with one another, sold more than one million copies.

Put another way, it seems strange that women, among the strongest supporters of diversity, have failed to invite men into the law school dialogue about maleness and the alleged dysfunctions of legal education. Who can deny that the gender talk would be better with more inclusiveness? That the rhetoric of gender in recent years might have made such an invitation necessary should be clear to anyone who walks into a large bookstore and looks for a male author among hundreds of works devoted to "women's studies."²³⁷ Nancy Levit provides the best solution to the "self-aggrandizement" problem, which is symbolized by the published opinion of a colleague of mine that on a scale of intellectual development ranging from one to four—from a dualistic view of one's environment to a multiplicitous one—women and minorities begin at step three.²³⁸ "Feminists," writes Levit, "should . . . try to foster men's interest in writing about gender issues and interpreting, adopting, expanding on, and reacting to feminist ideals and methodologies."²³⁹

237. Perhaps this section would be more appropriately labeled, "Women Writing on Gender."

238. See Deborah Post in Louise Harmon and Deborah W. Post, *Cultivating Intelligence: Power, Law and the Politics of Teaching* 22-55 (NYU 1996). What is Post, who is both black and female, saying here? If she started on a higher plane than her white male readers and has progressed at a more or less equal pace with them, she is still at a higher plane. Her opinions are, therefore, presumably entitled to special consideration.

Post's claim for women's higher consciousness is matched by a widely accepted claim to women's "multiple consciousness" or "second-sight," which comes from living under oppression. The women of color in this scheme may be blessed with multidimensional vision. See Matsuda, 11 Women's Rts L Rep at 7 (cited in note 42); Lani Guinier, *Of Gentlemen and Role Models in Critical Race Feminism*, in Adrienne K. Wing, ed, *Critical Race Feminism: A Reader* 73, 75 (NYU 1997). For more references to arguments that women are epistemologically privileged and a critique of that claim, see Nancy Levit, *The Gender Line: Men, Women and the Law* 281 & nn 73-74 (NYU 1998). Levit is a professor of law at the University of Missouri-Kansas City School of Law.

Implied in the foregoing claims for women's greater intellectual acuity due, in part, to their experience of oppression, is a claim of moral advantage. Robin West makes that claim explicit. "There is surely no way to know with any certainty whether women have privileged access to a way of life that is more nurturant, more connected, more natural, more loving, and therefore more moral," she concedes. However, she continues, "[I]t does seem that whether by reason of sociological role, psychological upbringing, or biology, women are *closer* to such a life." See West, *Caring for Justice* at 280 (cited in note 3) (emphasis in original).

One would expect that, living closer to the moral ideal, women would produce a superior jurisprudence. And so they do, according to Note, "Mother," "Parent," and Bias, 69 Ind L J 1165, 1169 (1994) ("a dynamic feminist approach . . . renders a more honest and fair decision-making process than do other legal methodologies"). The student has apparently learned her lesson well.

239. See Levit, *The Gender Line* at 224 (cited in note 238). Would not encouraging male participation in feminist dialogue help evaluate such views as MacKinnon's that *normal* marital sex often reflects male power over females, that in an environment of equality there would be less marital sex? See note 10. Even assuming that there is more marital sex going on than would be the case in MacKinnon's ideal world, MacKinnon has surely not made out a claim of oppression. People contract with one another precisely because they attach different values to goods and services. It is possible, in other words, that normal marital bargaining also results in more male cooking, lawncutting, dishwashing and drying, housepainting, or grocery shopping, and maybe all of the above, than would take place if males had their druthers. That such sexual negotiation does take place is certainly implicit in Robin West's observation that "because men so badly want what women have, women are by nature the more powerful." See West, *Caring for Justice* at 134 (cited in note 3). It is explicit and accepted as inevitable, and not ordinarily problematic, in Linda Hirshman, *Hard Bargains: The Politics of Heterosexuality*, 55 Wash & Lee L Rev 185 (1998).

The lack of diversity may be unnecessary to explain *Becoming Gentlemen's* powerful influence on the female law professorate. Might not feminist epistemological notions themselves explain the current state of the literature on women in law school? If women resist judging people with whom they converse²⁴¹—if they believe that truth is arrived at through collaboration and that everyone of good faith offers valuable insight that should be incorporated in a larger truth—might such attitudes not work against women here and in other intellectual activities in which they engage?

Knowledge, if Kant was right, is formed through judgments, and the practice of judging requires an instinct for doubt.²⁴⁰ “[M]any women,” by contrast, it is asserted, “find it easier to believe than to doubt.”²⁴¹ Is it not clear that any epistemology that does not encourage the “male” response of “prove it!” or even “baloney!”²⁴² risks creating an intellectual trap? For if the basic building blocks of a structure are unsound and are not regularly and rigorously tested, how can any superstructure, no matter how elaborate, stand secure?²⁴³ The “unwillingness, central to feminism, to dismiss some women as simply deluded”²⁴⁴ and, more generally, the realization that contemporary feminism is the

240. See, for example, Jacob Bronowski, *The Ascent of Man* 360 (Little, Brown 1973): “It is important that students [at the university] bring a certain ragamuffin, barefoot irreverence to their studies; they are not here to worship what is known but to question it.” This should not come as a surprise. *Cogito ergo sum* has often been paraphrased as “I doubt, therefore I am.” See *Cambridge Dictionary of Philosophy* 194-95 (Cambridge 1995) (Robert Audi, ed).

241. See Belenky, et al, *Women's Ways of Knowing* at 113 (cited in note 51). Put another way, “[t]he doubting model . . . may be peculiarly inappropriate for women, although we are not convinced [we doubt?] that it is appropriate for men, either.” Id at 228. MacKinnon offers a theory for women's inexperience with doubt. Since men control the world, she explains, they can imagine alternative configurations. Women, by contrast, have to take the world as a given. See MacKinnon, *Feminism Unmodified* at 58 (cited in note 10). These are extraordinary ideas. Not only has doubt proved to be at or close to the historic heart of the epistemological process (see, for example, text accompanying note 242), but women have long been urged in song and poetry not to believe what men tell them. See Dan Subotnik, “Sue Me, Sue Me. What Can You Do Me? I Love You”, 47 U Fla L Rev 311, 324 (1995). Now comes Belenky to say that skepticism is both inappropriate for and uncharacteristic of women. What a brief for women's intellectual weakness, indeed irrelevance! In at least one important interpretation, women and doubt are close allies. That is, feminism, like all postmodern movements, fits neatly into Paul Ricoeur's “hermeneutics of suspicion,” as opposed to “hermeneutics of faith.” See Ray Carney, *A Yellow Pages of Theory and Criticism*, 62 Partisan Rev 138, 142 (1995).

242. To be sure, some women, Belenky reports, easily resorted to such responses as “That's bullshit” and “That teacher was an asshole. He didn't know what he was talking about.” These women were similar to males whom William Perry called “oppositional multiplists.” See Belenky, et al, *Women's Ways of Knowing* at 84 (cited in note 51).

243. Consider the Gaber article. See text accompanying note 135. It is not hard to imagine how the article materialized. Imagine that Gaber approached her classmates with the proposition that they record the experience of law school for women. Even if, as she claims, she offered participation to classmates randomly (see text accompanying note 137), it is likely under a theory of collaboration, and not doubt, that classmates who felt differently from her would have shaped their comments accordingly or demurred entirely. And in view of the fact that the law school elicited virtually no positive reactions from those who did in fact participate, the foregoing scenario seems especially likely.

244. Catharine MacKinnon, *Feminism, Marxism, Method and the State: Towards Feminist Jurisprudence* (1983), in Katharine T. Bartlett and Rosanne Kennedy, eds, *Feminist Legal Theory: Readings in Law and Gender*

very product of doubt projected onto the social and political structure are presumably why Deborah Rhode has urged that we “remain skeptical about Theory”;²⁴⁵ why the anti-essentialist Angela Harris argues that “feminist theorizing about ‘women’ must . . . be strategic and contingent, focusing on relationships, not essences [so that] men will cease to be a faceless Other and reappear as potential allies”;²⁴⁶ why political theorist Susan Moller Okin concludes her essay, *Thinking Like a Woman*, with the observation that “[i]t is still not clear what ‘thinking like a woman’ really means”;²⁴⁷ and why Katharine Bartlett reminds her readers at the end of her recent essay that feminist “method requires us to leave no myths untouched, not even our own.”²⁴⁸ It may also be why Heather Wishik thinks feminists should “question everything”²⁴⁹ and why, notwithstanding Frug’s brief for feminist wrath,²⁵⁰ Nancy Levit concludes that “[t]he rhetoric of anger has outlived its usefulness.”²⁵¹

CONCLUSION

To conclude that the debate on gender climate in American law schools has been largely unproductive is not at all to say that the issues discussed here have been finally resolved. On the contrary, our analysis leaves a number of questions outstanding.

(1) Whatever the accuracy of its measure of gender climate in the early 1990s—let alone the early 1970s when Guinier was in school²⁵²—does *Becoming Gentlemen* accurately measure gender climate today? The answer is probably no. For one thing, with all the law shows on television and other media attention on what lawyers do and how they do it, women students are coming to law school with a far better sense of the rigors of law practice and legal education than they previously had. It is hard to imagine that these students, even if they grew up

181, 196 n 5 (Westview 1991).

245. See Rhode, *Theoretical Perspectives on Sexual Difference* at 8 (cited in note 78).

246. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan L Rev 581, 612 (1990).

247. Susan M. Okin, *Thinking Like A Woman*, in Rhode, ed, *Theoretical Perspectives on Sexual Difference* at 159 (cited in note 78).

248. Katharine T. Bartlett, *Cracking Foundations as Feminist Method*, 8 Am U J Gender Soc Pol & L 31, 54 (2000).

249. See Heather Wishik, *To Question Everything: The Inquiries of Feminist Jurisprudence*, 1 Berkeley Women’s L J 64, 77 (1985).

250. See text accompanying note 229.

251. See Levit, *The Gender Line* at 222 (cited in note 239). “The intoxication of anger, like that of the grape,” observed Clergyman Caleb Cotton, “shows us to others, but hides us from ourselves.” See Kenneth Lasson, *The Tintinnabulation of Bell’s Letters*, 36 Washburn L J 18, 22 (1996) (quoting Cotton).

252. A good deal of anecdotal evidence persuades me to concede the existence of a difficult environment for the relatively few women in legal education in this earlier period. One does not have to ascribe evil animus to the men, students or professors. It is not hard to imagine that, having no experience at dealing with women in that setting, the men were like awkward junior high schoolers at their first dance who were expected to take the initiative. In short, it is conceivable that the Penn Researchers have subconsciously conflated prevailing conditions in the early 1970s and early 1990s.

without knowing any women lawyers, would nevertheless be surprised by the adversarial system. Second, perhaps as a consequence of *Becoming Gentlemen* and its progeny, the academy has added women-and-the-law seminars, small sections for first-year classes, and dispute resolution and negotiation courses,²⁵³ while perhaps taking some of the hard edge off the Socratic method in recent years.²⁵⁴ Third, women are engaged in legal education as teachers and students today in appreciably larger numbers than was the case in the early 1990s, much less the seventies. Finally, enrollment rates for women in law school have gone up from 20 percent in 1975, to 40 percent ten years later, to 50 percent today.²⁵⁵ Finally, in by far the most comprehensive of empirical studies since *Becoming Gentlemen* was published, no gender difference of “practical significance” was found in students’ grades.²⁵⁶ In sum, the story of women students in law school seems nothing less than sensational. Characterizing the law school environment for women as “hostile” under these circumstances implies a level of masochism in women students far beyond the power of a mere law school to remedy.

And yet, in spite of the foregoing changes, there has surely been no “dismantling” or “reinvention” of the law school, with attendant “fundamental change in its teaching practices, institutional policies and social organization,” since 1997 when *Becoming Gentlemen* came out as a book.²⁵⁷ The Penn Researchers might, moreover, point to the Gaber and Torrey studies to argue for the continuing validity of their findings. In sum, the Penn Researchers would almost surely come to the same conclusions today.

(2) Much the same can be said about the climate for women faculty. Women’s representation on tenure track and visiting positions is now 43.5 percent.²⁵⁸ The study of student evaluations herein, moreover, is encouraging. Still, the question remains: have women faculty been forced unfairly to suppress their muliebrity (which presumably will be well defined) to reach the point where they are evaluated no differently from men? A fuller answer to this question would require looking beyond the sentiments of students to those of women faculty, an endeavor beyond the scope of this Article. Thus, all that can be done here is to echo the calls for more study.

(3) Is there a price paid by women for the sententiousness and tendentiousness in the discussion of differences between men and women’s learning styles? Would a moratorium on discussion of women’s unique nature and experience be salutary? Consider the impact on women of hearing from relational feminists

253. Ruth Ann Crowley, one of my readers, expresses the hope that someone will examine the myth that ADR is a softer, more feminine alternative to traditional courses.

254. See Orin Kerr, *The Decline of the Socratic Method at Harvard*, 78 Neb L Rev 113 (1999).

255. See Neumann, 50 J Legal Educ at 314 (cited in note 177).

256. See text accompanying note 121.

257. See text accompanying note 55. See also Guinier, 24 NYU Rev L & Soc Change 1 (cited in note 159).

258. See Subotnik, 50 J Legal Educ at 450 (cited in note 175).

that they, more than men, learn from personal experience and not through abstract principle, from collaborative learning rather than from hierarchical teaching methods. Or from other presumably well-meaning friends, that in the face of all the evidence they cannot compete with men on tests requiring quickness of response.²⁵⁹ If, as we are so often told, words have consequences, such theories will discourage women from going to law school. For those who persist, may these diagnoses of women's *maks* not have an iatrogenic effect?

In defending her brand of dominance feminism against charges that her emphasis on women's powerlessness demeans women, Catharine MacKinnon concedes the power of academic discourse to shape social consciousness, thus rejecting the argument frequently heard that academics have no influence. "Speak as though women are not victimized," she says, "and we will not be any more [for s]peech has an almost mystical power here."²⁶⁰ But if MacKinnon's position is right here, it would seem to follow that the obverse—the demoralizing power of victimization claims—is also right. If so, and if *Becoming Gentlemen's* findings are dubious, MacKinnon is effectively critiquing her own and the Penn Researchers' work. Indeed, is it not possible, perhaps even likely, that women who regardless of major already outperform men in high school, college, and graduate school,²⁶¹ might also outshine men in law school if they were taught that law school is women's natural habitat?

Discussion of what women can and cannot do is not limited to the law. Women represent a small percentage of PhDs in math, physics, and computer science, the hardest of sciences.²⁶² One hears a variety of strange opinion about this puzzling and disturbing phenomenon. If women are discouraged from embracing these areas of endeavor because of promiscuously spun theories by feminists,²⁶³ perhaps it is fair to say that it is not American graduate schools but

259. See Robert Schaeffer, *Who Wants to Be a Contestant?* NY Times A15 (Feb 19, 2000) (discussing why there are so few women qualifying as contestants for the television show *Who Wants to Be a Millionaire?* "A large body of research on standardized testing shows that responding quickly to recall-based, multiple choice items in a high-pressure setting is a skill in which men in general, and brash white men in particular, excel. Women do better when time constraints are relaxed, when subtleties matter and when 'strategic guessing' is not rewarded.") Schaeffer is Director of Public Education for FairTest, a Cambridge, Massachusetts, group that advocates testing reform. A large body of evidence, however, shows no significant differences between men and women on such multiple choice tests as the LSAT and the Multistate Bar Exam. See Wightman, *Women in Legal Education* at 11 (cited in note 2); Linda F. Wightman, *LSAC National Longitudinal Bar Passage Study* 26 (LSAC 1998). The use of take-home exams (see text accompanying note 117) is recommended based on this same premise. But do women do worse on timed exams than on untimed exams? Lani Guinier offers only the following evidence: "Through my informal discussion with various professors, the observation has been made that many women perform better on take-home exams and research assignments that give them ample opportunity to think and reflect." See Guinier, 24 NYU Rev L & Soc Change at 7-8 (cited in note 159).

260. See MacKinnon, *Feminism Unmodified* at 221 (cited in note 10).

261. See Wightman, *Women in Legal Education* at 15 (cited in note 2).

262. In 1996, women earned 20.6 percent, 13 percent and 15.1 percent of PhDs in these fields, respectively. Londa Schiebinger, *Has Feminism Changed Science?* 197-99 (Harvard 1999).

263. Women who believe that their nature is to make connections with others are not likely to make

promoters of negative, can't-do feminism who, "allowing significant achievement in women . . . to be lost among concerns of . . . alienation"²⁶⁴ and thereby creating even more alienation, have become women's worst enemies.²⁶⁵

In this highly self-analytical age of ours, one last question remains to be considered: How shall the reader understand *The Cult of Hostile Gender Climate*? If one adopts an essentialist view of men and women's natures, this Essay will seem essentially—and hopelessly—male. The hardened feminist reader will find nothing relational here, no attempt at collaboration, no synthesis of related viewpoints, but rather an aggressive, even bullheaded effort to create hierarchy. And not just any hierarchy, but the paradigmatic and destructive kind in which a male gets off by putting women down. Using the quintessential male sport of boxing as a metaphor, this Article will be seen as just one mass title bout in which an unranked male attempts to knock out all feminist contenders so as to establish himself as champ.

Is this a fair view? Not, presumably, according to Patricia Williams or, as we shall see, Martha Minow. "One of the subtlest challenges we face," Williams writes, "is how to relegitimize the national discussion of . . . gender tensions so that we can get past the Catch-22 in which merely talking about it is considered an act of war, in which not talking about it is complete capitulation to the status quo."²⁶⁶ No, if Lani Guinier is not from Venus, Dan Subotnik is not from Mars. Its male authorship notwithstanding, this Article comes not to bring the sword of patriarchy to womanhood. Much less is *The Cult of Hostile Gender Climate* designed to bring primitive talionic pleasures to the male law professorate for the rebarbative self-righteousness and, more important, for the terrifying and destructive claims of feminists:²⁶⁷ a bombshell for a bombshell. Unlike *Becoming Gentlemen*, this Project is not a call to arms but, quite the contrary, a blow for gender peace. With men actively participating in the gender discourse, feminists should stop shooting first and asking questions later, if at all.

For Martha Minow, too, criticism of feminism is to be welcomed. Indeed, the absence of such criticism "disturbs" her.²⁶⁸ In the law business, she writes, by being "the subject of sustained criticism," as Lani Guinier and her followers

a connection with math and physics.

264. See text accompanying note 122. This is a nice rebuke to the feminist gender climatologists. Perhaps only a woman from outside the legal academy, like Wightman, could get away with it.

265. Erica Jong describes an unexpected peril facing ambitious women. Women authors, she writes, "have set out to sea without life preservers. But pirates are still coming after them to board their decks and try to sink their ships. And some of these pirates," she "sadly" concludes, "are other women." Erica Jong, *What Do Women Want?: Bread, Roses, Sex, Power* 47 (Harper Collins 1998). If Jong is right, then perhaps it is the female, not the male professors, whom female students need fear most. See text accompanying note 173.

266. Patricia Williams, *The Rooster's Egg: On the Persistence of Prejudice* 40 (Harvard 1995).

267. See Levit, 43 UCLA L Rev at 1038 (cited in note 64) ("liberal feminism, difference theory, dominance theory, and postmodern feminism have analyzed, objectified, vilified, and deconstructed men").

268. Martha Minow, *Beyond Universality*, 1989 U Chi Legal F 115-17.

are here, we know we are being “taken seriously.”²⁶⁹ The occasional lapses of *gravitas* herein should not be heard as undermining this claim. Indeed, they highlight what is missing in gender climate debate. “If we laugh at each other,” says Ralph Ellison, “we won’t kill each other.”²⁷⁰

A slim hope given the rhetoric of the last fifteen years? Maybe. Regardless, this Article should have some residual value. For now we know that even if the Penn Researchers, Mary Becker, Morrison Torrey, Carrie Menkel-Meadow, et al., are right, law school gender climate is not, inevitably, the grim story readers have been led to believe. Guinier and the others can now share the good news with their talented daughters—as I am doing with mine—that they can avoid the dark woods, the talking heads, the self-satisfied dead white men looking down on them from the high walls of the University of Pennsylvania,²⁷¹ Yale,²⁷² and all the other top-ranked law schools that accept but do not respect them. If they take *Becoming Gentlemen* and its progeny seriously, if they shudder at the thought of a “hostile learning environment”²⁷³ in schools that “favor men over women in every way imaginable,”²⁷⁴ and if they dream of “glowing in the dark” like the men,²⁷⁵ and, yes, maybe even of finding some feminine *jouissance*,²⁷⁶ they should, of course, come to Touro.²⁷⁷

269. Id.

270. John F. Callahan, *Frequencies of Memory: A Eulogy for Ralph Waldo Ellison*, 18 *Callaloo* 298 (Spring 1995) (quoting Ellison).

271. See text accompanying notes 26-56 and 159.

272. See text accompanying notes 94-102.

273. See text accompanying note 20.

274. See text accompanying note 1.

275. See text accompanying note 80.

276. Defined as “total joy or ecstasy.” See Maggie Humm, *The Dictionary of Feminist Theory* 108 (Ohio State 1990) (quoting Julia Kristeva).

277. “We offer a remarkably student-friendly environment, one in which faculty members are attentive to the needs of those they teach.” Howard A. Glickstein, *A Message From the Dean*, Touro College Jacob D. Fuchsberg Law Center Bulletin 3 (2001/2002). The reader is challenged to find comparable commitments by the schools mentioned above.

APPENDIX I

STUDENT FACULTY EVALUATION

INSTRUCTOR: _____

COURSE: _____

Circle One: Fall Spring Summer 2000

Circle One: Day Evening

NOTE TO STUDENTS: The Instructor does not see this or the Scantron sheet. The Student Affairs Office tabulates data and types student comments for administration, faculty and students.

PLEASE FILL IN THE CORRESPONDING LETTER IN PENCIL ON THE SCANTRON SHEET WHICH BEST ANSWERS THE FOLLOWING QUESTIONS.

RATINGS FOR THE FOLLOWING ARE: a = **EXCELLENT**; b = **VERY GOOD**; c = **GOOD**; d = **FAIR**; e = **POOR**.

A. INSTRUCTOR'S KNOWLEDGE OF COURSE MATERIALS:

1. Depth of understanding of the subject
2. Level of preparation for each class

Comments:

B. INSTRUCTOR'S ORGANIZATION OF THE SEMESTER:

3. Sequencing of materials
4. Spacing of workload over duration of course
5. Clarity of what materials will be covered during class sessions

Comments:

C. INSTRUCTOR'S CHOICE OF COURSE CONTENT:

6. Choice of substantive content
7. Integration of current developments
8. Choice of casebook, texts, etc.

Comments:

D. INSTRUCTOR'S IN-CLASS PERFORMANCE:

9. Ability to present material clearly
10. Ability to respond to questions
11. Ability to stimulate participation and sustain student interest
12. Enthusiasm for teaching course

Comments:

E. INSTRUCTOR'S RELATIONSHIP WITH STUDENTS:

13. Treatment of students in class
14. Openness to consultation outside of class

Comments:

F. DID THE INSTRUCTOR:

15. Give you a syllabus? (a = Yes; b = No)
16. Follow the syllabus? (a = Yes; b = No; c = not applicable)
17. Teach the New York law or rule? (a = Yes; b = No; c = not applicable)

G. OVERALL TEACHING ABILITY:

18. Without reference to any particular answer or comments already given, how would you rate the ability of the instructor to help you learn the subject matter?

Comments:

STUDENT TEACHING ASSISTANT EVALUATION**TEACHING ASSISTANT:** _____

WITH RESPECT TO THE TEACHING ASSISTANT IN THIS COURSE, PLEASE ANSWER THE FOLLOWING QUESTIONS:

19. How often did you attend the TA sessions?

a = ALWAYS; b = FREQUENTLY; c = OCCASIONALLY; d = RARELY; e = NEVER.

FOR THE REMAINING TA QUESTIONS:

a = EXCELLENT; b = VERY GOOD; c = GOOD; d = FAIR; e = POOR.

20. TA's knowledge of the material

21. TA's ability to answer questions and communicate clearly

22. TA's approachability

23. Overall rating of the Teaching Assistant

ADDITIONAL COMMENTS ABOUT THE TEACHING ASSISTANT:

24. Sex: a = male; b = female.

25. Division: a = day; b = night.

26. Year of Study: a = first; b = second; c = third; d = fourth; e = fifth.

APPENDIX II

Student Questionnaire

Over the last few years an ABA Commission and a number of law teachers have called for studies of the gender climate at American law schools. In this connection a few questions are presented here for your consideration. Your help would be most appreciated. TO ENSURE YOUR FULLEST COOPERATION THESE RESULTS WILL NOT BE MADE AVAILABLE TO THE FACULTY MEMBER. (Feel free to base your answer on any experience you had last semester with this instructor.)

- 1) Your gender: A) male; B) female. (Please circle and enter on answer key.)

UNLESS DIRECTED OTHERWISE ANSWER AS FOLLOWS: A) STRONGLY AGREE; B) AGREE; C) NEITHER AGREE NOR DISAGREE; D) DISAGREE; AND E) STRONGLY DISAGREE.

- 2) I enjoy this class.
 3) This class focuses too much on black letter law and not enough on social and psychological causes and effects of law.
 4) The instructor calls on students in a fair manner without regard to gender.
 5) The professor expresses ideas clearly.
 6) The professor is open to discussion with students out of class.
 7) The professor is in control of this class.
 8) I was offended by the use of gender-insensitive language in this class.
 9) As far as I can tell, this class is a more difficult, less satisfying experience for me than for most members of the opposite sex.

PLEASE NOTE: THE NEXT ITEMS HAVE DIFFERENT RESPONSE FORMATS

- 10) Did any one group dominate class discussion? A) MEN; B) WOMEN; C) NO APPRECIABLE DIFFERENCE.

- 11) To what extent, if any, is one sex more comfortable with the Socratic method? A) MEN MUCH MORE; B) SOMEWHAT MORE; C) SAME COMFORT LEVEL; D) WOMEN SOMEWHAT MORE COMFORTABLE; E) WOMEN MUCH MORE COMFORTABLE.

- 12) Were you reluctant to speak because of A) disrespect shown by members of the opposite sex; B) difficulty of material; C) English not your native tongue; D) other; E) you were not reluctant.

- 13) I expect a grade of 1-A; 2-B; 3-C; 4-D, 5-F.

For comments please use Answer Key (specifying question number).

APPENDIX III

Table I Group Statistics

	Sex of Student	Number	Mean	Standard Deviation
Overall teaching ability	Male	518	1.6718	.9577
	Female	482	1.7925	1.0608
Sustain student interest	Male	779	1.8228	1.0812
	Female	677	1.9557	1.1112
Openness to consultation	Male	768	1.6901	.9757
	Female	663	1.7541	1.0216
Present material clearly	Male	779	1.7946	1.0774
	Female	675	1.8919	1.1355
Treatment of students	Male	777	1.7181	1.0645
	Female	677	1.8715	1.1239

Table II Independent Samples Test

	t-test for Equality of Means		
	T	Df	Sig. (2-tailed)
Overall teaching ability	-1.884	968.824	.060
Sustain student interest	-2.308	1454	.021
Openness to consultation	-1.211	1429	.226
Present material clearly	-1.674	1452	.094
Treatment of students	-2.670	1452	.008

Table III Report

		Present mater- ial clearly	Sustain Stu- dent interest	Treatment Of Students	Openness to consultation	Overall teach- ing ability
1st year males	Mean	1.8075	1.7494	1.6651	1.7217	1.6851
	Number (N)	426	427	427	424	289
	Std. Deviation	1.1212	1.0394	.9728	.9811	.9936
2nd year males	Mean	1.9118	2.0651	2.0476	1.8086	1.7434
	N	170	169	168	162	113
	Std. Deviation	1.0815	1.2590	1.3260	1.1120	.9890
3rd year males	Mean	1.7025	1.7851	1.5583	1.4793	1.5616
	N	121	121	120	121	73
	Std. Deviation	1.0054	.9764	.9856	.8376	.8331
4th year or more males	Mean	1.5208	1.6667	1.4375	1.5745	1.5161
	N	48	48	48	47	31
	Std. Deviation	.8503	.8337	.6812	.6166	.8513
Total males	Mean	1.7961	1.8196	1.7182	1.6923	1.6700
	N	765	765	763	754	506
	Std. Deviation	1.0819	1.0776	1.0626	.9755	.9625
1st year females	Mean	2.0337	1.9450	1.9205	1.8111	1.8678
	N	326	327	327	323	227
	Std. Deviation	1.2411	1.1091	1.0965	1.0238	1.1522
2nd year females	Mean	1.9125	2.1562	2.1313	1.8581	1.8393
	N	160	160	160	155	112
	Std. Deviation	1.1181	1.2160	1.3085	1.1478	1.0868
3rd year females	Mean	1.5957	1.7887	1.5493	1.5540	1.5963
	N	141	142	142	139	109
	Std. Deviation	.8534	.9952	.9037	.8942	.8178
4th year or more females	Mean	1.6923	1.7692	1.4615	1.5000	1.6923
	N	39	39	39	38	26
	Std. Deviation	1.0040	.9857	.8840	.7970	.9703
Total females	Mean	1.8919	1.9521	1.8653	1.7496	1.7890
	N	666	668	668	655	474
	Std. Deviation	1.1373	1.1118	1.1235	1.0234	1.0614
Total 1st years	Mean	1.9056	1.8342	1.7759	1.7604	1.7655
	N	752	754	754	747	516
	Std. Deviation	1.1792	1.0738	1.0353	1.0001	1.0691
Total 2nd years	Mean	1.9121	2.1094	2.0884	1.8328	1.7911
	N	330	329	328	317	225
	Std. Deviation	1.0977	1.2372	1.3161	1.1281	1.0376
Total 3rd years	Mean	1.6450	1.7871	1.5534	1.5192	1.5824
	N	262	263	262	260	182
	Std. Deviation	.9264	.9848	.9403	.8675	.8219
Total 4th year or more	Mean	1.5977	1.7126	1.4483	1.5412	1.5965
	N	87	87	87	85	57
	Std. Deviation	.9208	.9010	.7740	.6995	.9036
Total	Mean	1.8407	1.8814	1.7869	1.7189	1.7276
	N	1431	1433	1431	1409	980
	Std. Deviation	1.1087	1.0953	1.0935	.9981	1.0128

Table IV Independent Samples Test

	t-test for Equality of Means		
	T	Df	Sig. (2-tailed)
Enjoy class	.001	438	.999
Too much black letter	-2.182	435	.030
Prof. calls on students w/o regard to gender	.042	433	.966
Prof. expresses ideas clearly	-.453	437	.651
Prof. open to students out of class	.426	437	.670
Prof. is in control of class	-.748	404.448	.455
Offended by gender-insensitive language	-1.620	434	.106
Class more difficult, less satisfying than for opposite sex	-3.278	426	.001
Sex more comfortable with Socratic method	2.654	390.815	.008
Grade expected	1.686	422	.092

Table V Group Statistics

	Gender	Number	Mean	Standard Deviation
Enjoy class	Male	222	1.74	.94
	Female	218	1.74	.95
Too much black letter	Male	221	3.54	1.13
	Female	216	3.77	1.07
Prof. calls on students without regard to gender	Male	220	1.46	.84
	Female	215	1.46	.78
Prof. expresses ideas clearly	Male	221	1.80	1.01
	Female	218	1.84	1.18
Prof. open to students out of class	Male	223	1.70	.97
	Female	216	1.66	.87
Prof. in control of class	Male	222	1.50	.76
	Female	215	1.56	.97
Offended by gender insensitive language	Male	222	4.21	1.14
	Female	214	4.38	1.00
Class more difficult, less satisfying than for opposite sex	Male	213	3.82	1.17
	Female	215	4.18	1.10
Sex more comfortable with Socratic method	Male	221	2.82	.64
	Female	212	2.63	.85
Grade expected	Male	217	1.76	.71
	Female	207	1.64	.67

Table VI Which Group Dominates Class Discussion—
Crosstabulation

	Men	Women	No appreciable difference	Total
Gender of respondent:				
Male	30	4	184	218
Female	54	5	159	218
Total	84	9	343	436

Table VII Reason Reluctant to Speak in Class—Crosstabulation

Gender	Disrespect shown by opposite sex	Difficulty of material	English not native language	Other	Not reluctant	Total
Male	7	40	21	32	124	224
Female	9	21	7	52	125	214

Table VIII Chi-Square Tests

	Value	Df	Asymp. Sig. (2- sided)
Pearson chi-square	8.790 ^a	2	.012
Likelihood ratio	8.889	2	.012
Linear-by-linear association	8.770	1	.003
Number of valid cases	436		

a. Two cells (33.3 percent) have expected count less than five. The minimum expected count is 4.50.